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THE

WISCONSIN INCOME TAX LAW

Soldiers' Bonus Surtax Law
Soldiers' Educational Bonus Surtax Law
Teachers' Retirement Fund Surtax Law
Refund and Tax Compromise Laws

WITH EXPLANATORY NOTES, RULINGS AND CITATIONS TO COURT DECISIONS

FIFTH EDITION

Issued by
WISCONSIN TAX COMMISSION
MADISON, WISCONSIN
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PREFACE

This pamphlet contains the Wisconsin Income Tax Law of 1911 as amended in 1913, 1915, 1917, 1919 and 1921; the soldiers' bonus, soldiers' educational and teachers' retirement fund surtax laws, with explanatory notes, together with some of the important rulings of the tax commission, citations to supreme court decisions, and instructions to assessors of incomes.

Taxpayers and assessors of incomes for whose benefit this pamphlet is published are urged to familiarize themselves with its contents, and to observe carefully the rules and regulations therein contained in the preparation and audit of income tax returns.

Taxpayers are invited to seek the advice and counsel of the tax commission or assessors of incomes, either in person or by letter, when in doubt as to what the law requires of them.

WISCONSIN TAX COMMISSION

CHAPTER I

The Income Tax Law

71.01. Persons and subjects taxable

There shall be assessed, levied, collected and paid a tax on all income received in each calendar year beginning with the year 1920 by every person residing within the state and by every nonresident of the state upon such income as is derived from property located or business transacted within the state, except as hereinafter exempted; provided, that all persons whose fiscal year ends on some other date than December 31, may be assessed on the income of such fiscal year in lieu of the income of the calendar year, at the discretion of the tax commission. This section shall not be construed to prevent or affect the correction of errors or omissions in the assessment of income of former years as authorized by subsection (1) of section 71.10 and section 71.11.

71.02. Definition of terms: what income taxable

(1) The term "person," as used in this act, shall mean and include any individual, firm, copartnership, and every corporation, joint stock company or association organized for profit, and having a capital stock represented by shares, unless otherwise expressly stated.

(2) The term "income," as used in this act, shall include:

(a) All rent of real estate.

(b) All dividends derived from stocks and all interest derived from money loaned or invested in notes, mortgages, bonds or other evidence of debt of any kind whatsoever, provided, that the term "dividends" as used in this section shall be held to mean any distribution made by a corporation, joint stock company or association, out of its earnings or profits accrued since January 1, 1911, and paid to its shareholders whether in cash or in stock of the corporation, joint company or association.

(c) All wages, salaries or fees derived from services; provided, that compensation to public officers for public service shall not be computed as a part of the taxable income in such cases where the taxation thereof would be repugnant to the constitution.

(d) All profits derived from the transaction of business or from the sale of real estate or other capital assets; provided, that for the purpose of ascertaining the gain or loss resulting from the sale or other disposition of property, real or personal, acquired prior to January 1, 1911, the fair market value of such property as of January 1, 1911, shall be the basis for determining the amount of such gain or loss.

(e) All royalties derived from mines or the possession or use of franchises or legalized privileges of any kind.

(f) And all other gains, profits or income of any kind derived from any source whatever except such as hereinafter exempted.

(3) (a) Persons who customarily estimate their incomes or profits on a basis other than cash receipts and disbursements may, with the consent and approval of the tax commission, return for assessment and taxation the income or profits earned during the income year, in accordance with the method of accounting regularly employed in keeping their books, except as hereinafter provided; but if no such method of accounting has been employed, or if the method used does not clearly reflect the taxable income, the computation shall be made upon such basis and in such manner as in the opinion of the tax commission will clearly reflect such income.

(b) The terms "paid" or "actually paid," as used in this chapter, are to be construed in each instance in the light of the method used in computing taxable income whether on the accrual or receipt basis; provided that the deduction for federal income and excess profits taxes shall be confined to cash payments made within the year covered by the income tax return, and that reserves for contingent losses or liabilities shall not be deducted.

(c) Income from mercantile or manufacturing business, rentals, royalties or the operation of any farm, mine or quarry, or from the sale of real or personal property for the purposes of taxation shall follow the situs of the property or business from which derived, and all other income including that derived from

personal service, professions and vocations and from land contracts, mortgages, stocks, bonds and securities shall follow the residence of the recipient.

(d) Persons engaged in business within and without the state shall be taxed only upon such income as is derived from business transacted and property located within the state, which may be determined by an allocation and separate accounting for such income when made in the form and manner prescribed by the tax commission, but otherwise shall be determined in the manner specified in paragraph (e) of subsection 7 of section 1770b as far as applicable.

71.03. Deductions from gross income of corporations

Every corporation, joint stock company or association shall be allowed to make from its gross income the following deductions:

(1) Payments made within the year for wages of employees and salaries of officers if reasonable in amount, for services actually rendered in producing such income; provided, there be reported the name, address and amount paid each such employee or officer residing within this state to whom a compensation of seven hundred dollars or more shall have been paid during the assessment year.

(2) Other ordinary and necessary expenses and cash bonuses to employees, actually paid within the year out of the income in the maintenance and operation of its business and property, including a reasonable allowance for depreciation by use, wear and tear of property from which the income is derived and in the case of mines and quarries an allowance for depletion of ores and other natural deposits on the basis of their actual original cost in cash or the equivalent of cash; and including also interest paid during the year in the operation of the business from which its income is derived; provided, the debtor reports the amount so paid, the form of the indebtedness, together with the names and addresses of the parties to whom interest was paid.

(3) Losses actually sustained within the year and not compensated for by insurance or otherwise, provided that no loss resulting from the operation of business or the ownership of property may be allowed as a deduction, unless the income which might

be derived from such business or property would be subject to taxation under this act.

(4) Taxes other than special improvement taxes paid during the year upon the business or property from which the income taxed is derived, including therein taxes imposed by the state of Wisconsin and the government of the United States as income, excess or war profits and capital stock taxes.

(5) Dividends or income received within the year from stocks or interest in any copartnership, corporation, joint stock company or association, the income of which shall have been assessed under the provisions of this act; provided that when only part of the income of the copartnership, corporation, joint stock company or association from which such dividend or income was received shall have been assessed under this act only a corresponding part of such dividend or income shall be deducted; provided, further, that such copartnership, corporation, joint stock company or association report the name and address of each person owning stocks or having such interest and the amount of dividends or income paid such person during the assessment year.

(6) Amounts distributed to patrons in any year, in proportion to their patronage of the same year, by any corporation, joint stock company or association doing business on a cooperative basis (hereinafter called "company"), whether organized under chapter 86 or otherwise, shall be returned as income or receipts by said patrons, but may be deducted by such company as cost, purchase price or refunds; provided that no such deduction shall be made for amounts distributed to the stockholders or owners of such company in proportion to their stock or ownership, nor for amounts retained by such company and subject to distribution in proportion to stock or ownership as distinguished from patronage.

(7) Contributions or gifts actually made within the year to corporations or associations operating within the state organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies operating within the state for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of ten per centum of the taxpayer's taxable net income as computed without the benefit of this subsection.

71.04. Deductions from incomes of persons other than corporations

Persons other than corporations, joint stock companies or associations in reporting incomes for purposes of taxation shall be allowed the following deductions:

(1) Payments made within the year for wages of employees and a reasonable allowance for services of copartners or members of a firm actually rendered in producing such income. But no deductions shall be made for any amount paid for personal services unless there be reported the name and address and amount paid each such employee or copartner to whom a sum of seven hundred dollars or more shall have been paid during the assessment year.

(2) The ordinary and necessary expenses actually paid within the year in carrying on the profession, occupation or business from which the income is derived, including a reasonable allowance for depreciation by use, wear and tear of the property from which the income is derived, and in the case of mines and quarries an allowance for depletion of ores and other natural deposits on the basis of their actual original cost in cash or the equivalent of cash.

(3) Losses during the year and not compensated for by insurance or otherwise, provided that no loss resulting from the operation of business or the ownership of property may be allowed as a deduction unless the income which might be derived from such business or property would be subject to taxation under this act.

(4) Dividends or incomes received by any person from stocks or interest in any copartnership, corporation, joint stock company or association, the income of which shall have been assessed under the provisions of this act; provided that when only part of the income of any copartnership, corporation, joint stock company or association shall have been assessed under this act only a corresponding part of the dividends or income received therefrom shall be deducted, and provided, further, that said copartnership, corporation, joint stock company or association report the name and address of each person owning stock or having such interest and the amount of dividends or income paid to such person during the assessment year.

(5) Interest paid within the year on existing indebtedness; provided, the debtor reports the amount so paid, the form of the

indebtedness, together with the name and address of the creditor. But no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property, or for the conduct of a business, unless the income from such property or business would be taxable under this chapter.

(6) Taxes other than inheritance and special improvement taxes upon the property or business from which the income hereby taxed is derived paid by such persons during the year, including therein taxes imposed by the state of Wisconsin or the United States government as income taxes.

(7) Contributions or gifts actually made within the year to corporations or associations operating within the state organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies operating within the state for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of ten per centum of the taxpayer's taxable net income as computed without the benefit of this subsection.

71.05. **Exemptions**

(1) There shall be exempt from taxation under this chapter income as follows, to wit:

(a) To an individual, income up to and including eight hundred dollars;

(b) To husband and wife, twelve hundred dollars;

(c) For each child under the age of eighteen years, two hundred dollars;

(d) For each additional person, who is actually supported by and entirely dependent upon the taxpayer for his support, two hundred dollars. In computing said exemptions and the amounts of taxes payable by persons residing together as members of a family, the income of the wife and the income of each child under eighteen years of age shall be added to that of the husband or father, or if he be not living, to that of the head of the family and assessed to him. The taxes levied thereon shall be payable by such husband or head of the family, but if not paid by him may

be enforced against any person whose income is included in the assessment.

(e) Dividends received from state banks, national banks, mutual savings banks and trust companies subject to taxation by this state;

(f) Pensions received from the United States;

(g) All inheritances, devises, bequests and gifts received during the year;

(h) All insurance received by any person or persons in payment of a death claim by any insurance company, fraternal benefit society or other insurer. But endowment or other insurance paid to the insured in his lifetime shall be taxable upon the excess received over the amount paid for the insurance.

(2) Income of state banks, national banks, mutual savings banks, trust companies, mutual loan corporations, and building and loan associations and of all religious, scientific, educational, benevolent or other corporations or associations of individuals not organized or conducted for pecuniary profit.

(3) Incomes derived from property and privileges by persons now required by law to pay taxes or license fees directly into the treasury of the state in lieu of taxes, and such persons shall continue to pay taxes and license fees as heretofore.

(4) Income received by the United States, the state, and all counties, cities, villages, school districts or other political units of this state.

71.06. Rates of taxation

(1) The tax to be assessed, levied and collected upon the income of all persons, except as otherwise provided by law, after making such deductions and exemptions as are hereinbefore allowed, shall be computed at the following rates, to-wit:

(a) On the first one thousand dollars of taxable income or any part thereof, at the rate of one per cent;

(b) On the second one thousand dollars or any part thereof, one and one-fourth per cent;

(c) On the third one thousand dollars or any part thereof, one and one-half per cent;

(d) On the fourth one thousand dollars or any part thereof, one and three-fourths per cent;

(e) On the fifth one thousand dollars or any part thereof, two per cent;

(f) On the sixth one thousand dollars or any part thereof, two and one-half per cent;

(g) On the seventh one thousand dollars or any part thereof, three per cent;

(h) On the eighth one thousand dollars or any part thereof, three and one-half per cent;

(i) On the ninth one thousand dollars or any part thereof, four per cent;

(j) On the tenth one thousand dollars or any part thereof, four and one-half per cent;

(k) On the eleventh one thousand dollars or any part thereof, five per cent;

(l) On the twelfth one thousand dollars or any part thereof, five and one-half per cent;

(m) On any sum of taxable income in excess of twelve thousand dollars, six per cent.

(2) The taxes to be assessed, levied and collected upon the incomes of corporations, joint stock companies or associations, after making such deductions and exemptions as hereinbefore allowed, shall be computed at the following rates, to-wit:

(a) On the first one thousand dollars of taxable income or any part thereof, two per cent;

(b) On the second one thousand dollars or any part thereof, two and one-half per cent;

(c) On the third one thousand dollars or any part thereof, three per cent;

(d) On the fourth one thousand dollars or any part thereof, three and one-half per cent;

(e) On the fifth one thousand dollars or any part thereof, four per cent;

(f) On the sixth one thousand dollars or any part thereof, five per cent.

(g) On the seventh one thousand dollars or any part thereof, six per cent.

(h) On all taxable income in excess of seven thousand dollars, six per cent.

71.07. Assessment districts: assessors: deputies

(1) The state shall be divided into assessment districts by the state tax commission, but in no instance shall a county be divided.

(2) Not less than thirty days prior to the first of March, 1912, there shall be selected and appointed by the state tax commission an assessor of incomes for each assessment district in the state. Such assessor shall be a citizen and an elector of this state, but need not be a resident of the district in which he is appointed to serve; provided, however, that so far as practicable, preference shall be given in making such appointments to residents of the districts.

(3) The tax commission may in its discretion transfer any assessor of incomes from one district to another.

(4) Such assessor of incomes shall take and file the official oath. He shall be under the direction and control of the state tax commission, and shall make such reports to the commission, to the county board of review and the county board of supervisors, and perform such other duties, as the commission shall direct.

(5) The state tax commission may authorize any assessor of incomes to appoint such deputies and other assistants as may be required for the proper performance of his duties. Such deputies shall qualify in like manner and possess the same powers as the assessor.

71.08. Salaries of assessors, expenses and supplies

(1) The salaries of the assessors of incomes and their deputies and assistants shall be fixed by the state tax commission, but such salaries, together with the expenses of such assessors and their deputies and assistants, shall not in any year exceed in amount five cents for every thousand dollars of the valuation of all property as fixed by the tax commission in the state assessment of the preceding year. The assessor shall be furnished all necessary printing, stationery, postage and office equipment, and he and his deputies shall be entitled to receive their actual necessary expenses incurred in the performance of their duties. The salaries of the assessor and his assistants, and all such expenditures shall be audited and paid out of the state treasury in the same manner as

other similar salaries and state expenses are audited and paid, except as hereinafter provided.

(2) The county board of each county in which the assessor of incomes has an office shall provide at the expense of the county a suitable room or rooms in the courthouse or other convenient building at the county seat for the use of such assessor, together with all furniture, fixtures and other equipment necessary to properly conduct the duties of his office. If any county shall fail or refuse to furnish such quarters and equipment for the use of the assessor of incomes as herein provided, the tax commission may procure the same at the expense of the county responsible therefor. The rent of such office and the cost of such office equipment, if procured by the tax commission shall, in the first instance, be paid out of the state treasury as other claims against the state are audited and paid, and shall be included in the next apportionment and certification of state taxes and charges and collected from such county as other special charges are certified and collected.

71.09. Assessment of incomes

(1) The state tax commission and the assessors of income shall annually on the first day of January, or as soon thereafter as practicable, proceed to assess as hereinafter provided, every income received during the preceding calendar year liable to taxation under the provisions of this chapter. Liability to taxation for income which follows the residence of the recipient in the case of persons, other than corporations, joint stock companies and associations, moving into or out of the state shall be determined by the residence of such person on the thirty-first day of December of the income year. The assessment of corporations, joint stock companies and associations shall be made by the state tax commission, and the assessment of persons other than corporations, joint stock companies and associations shall be by the county assessor of incomes.

(2) In the performance of such duty the state tax commission and the county assessors of incomes shall respectively possess all powers now or hereafter granted by law to the state tax commission or assessors in the assessment of personal property and also the power to estimate incomes.

(3) Every corporation, joint stock company or association, whether taxable under this chapter or not, shall furnish to the tax commission a true and accurate statement, on or before February fifteenth of each year, except that returns for fiscal years ending on some other date than December thirty-first, shall be furnished within thirty days after the last day of such year in such manner and form and setting forth such facts as said commission shall deem necessary to enforce the provisions of this chapter. Such statement shall be made upon the oath or affirmation of the president, vice president or other principal officer and the treasurer of said corporation, joint stock company or association.

(4) Whenever in the judgment of the assessor of incomes any person other than a corporation, joint stock company or association shall be subject to income tax in his district under the provisions of this chapter, he shall notify such person to make report to him on or before March first of each year in such manner and form as the tax commission shall prescribe, specifying in detail the amounts of income received by him from all sources, together with the amount of income received by his wife and each child under eighteen years of age residing together with him as members of the family, and such other information as the commission shall deem necessary to enforce the provisions of this chapter. In case any person shall fail, neglect or refuse to make return when notified by the assessor of incomes so to do, such assessor shall estimate and assess his taxable income according to his best judgment and give notice thereof by mail. Any person who receives a taxable income during the year must report the same in the manner and form herein provided to the assessor of incomes, whether notified to do so or not, and shall be subject to the same penalties for failure to report as those who receive notice.

(5) Every guardian, trustee, executor, administrator, agent or receiver, and every other person or corporation acting in a fiduciary capacity shall make and render to the assessor of incomes of the district in which such representative resides, a verified list or return of the amount of income received by him for such person, ward, or beneficiary, together with all income received by the ward, beneficiary, deceased or incompetent person whom he represents or succeeds during the year covered by the

return and shall be liable to assessment and taxation therefor, subject to the deductions and exemptions provided in this chapter; provided, that such deductions or exemptions have not been claimed by or for such person, ward or beneficiary in another capacity. The return so made shall be signed by the person rendering it, and by the president or secretary thereof, if a corporation. Every person subject to an income tax in his representative capacity under this subsection shall have all of the remedies and rights of reimbursement for any tax assessed against or paid by him in such capacity prescribed by section 70.19.

(6) The income tax to be paid by guardians, trustees, agents or other persons or corporations acting in a fiduciary capacity shall, as to such income as follows the residence of the recipient, be paid in the district where the said guardian, trustee, agent or other fiduciary resides, if the ward, beneficiary or principal is a nonresident of the state of Wisconsin. If the ward, beneficiary or principal resides in the state of Wisconsin the tax upon all such income shall be paid in the district where the said ward, beneficiary or principal resides.

(7) An executor, administrator, guardian or trustee applying to a court having jurisdiction for a discharge from his trust and a final settlement of his accounts, before his application shall be granted, shall file with the assessor of incomes of his county a return of all income received in his representative capacity during the time between the last preceding January first and the date of his application for discharge and also similar returns of income received during each of the three next preceding calendar years as have not theretofore been filed. Upon receipt of such returns the income tax assessor shall immediately determine the amount of income tax due or to become due from such executor, administrator, guardian, or trustee and certify the amount or amounts to the court in which the application for discharge is pending and the court shall thereupon enter an order directing the executor, administrator, trustee or guardian, as the case may be, to pay to the treasurer of the county in which such proceeding is pending the amount of tax, if any, found due by the assessor of incomes, and take his receipt therefor. The certificate of the assessor of incomes shall contain the names of the counties, towns, cities or villages entitled to the tax and the amount to which each is entitled,

and a copy thereof shall be filed with the treasurer of the county in which said court is located. Such receipts shall be evidence of the payment of the tax and shall be filed with the court before a final distribution of the estate is ordered, and the executor, administrator, or trustee or guardian is discharged. The county treasurer shall pay to the several treasurers of the state, county, town, city, and village, the portion of the tax each is entitled to at the time and in the manner delinquent income taxes are paid by him. The assessor of incomes shall enter all such assessments upon the assessment roll for the year in which the assessment is made, if practicable to do so, otherwise upon the assessment roll of the following year and shall enter thereon opposite each such assessment the words "Paid to the county treasurer by order of court."

(8) Returns of income required to be made by virtue of the next preceding subsection may be dispensed with by order of the court having jurisdiction in cases where it is clearly evident to the court that no income tax is due or to become due from the trust estate.

71.10. Incorrect return by corporations: penalty for fraud and refusal to make returns

(1) Whenever it shall appear probable that a corporation has been over or underassessed, or that no assessment has been made when one should have been made in any one or more of the next previous three years, the tax commission may require such corporation to furnish such information with reference to its capital, surplus and business transacted as it may deem necessary to enable it to ascertain the amount of taxable income such corporation received during the year or years in question. Upon such information and such other information as it may be able to discover the commission shall determine the true amount of taxable income received during the year or years under investigation. If all or any part of the amount so ascertained shall not previously have been assessed, the same shall be assessed and entered upon the assessment rolls in the year discovered, and the normal tax thereon may be computed at twice the original rate. If it shall be found that the assessment was in excess of the actual taxable income received in any one or more of the previous three years, the tax commission may make allowance as far as possible for such ex-

cess in the assessment of the year when such error in assessment shall be discovered. No additional assessment shall be made under this section without giving at least ten days' notice in writing of the proposed assessment to the corporation to be subjected thereto. Such notice shall be served in the same manner as a circuit court summons is served, or by registered mail.

(2) In case of the failure on the part of a corporation to make a report of income within the time and in the manner prescribed by law, the tax commission may enter an assessment against said corporation upon ten days' notice in writing in a sum of not less than five hundred dollars. Such notice may be served by mail. After the tax on such assessment has been certified for collection to the treasurer of the town, city or village where the same is payable, the corporation assessed shall be forever barred from questioning the correctness of the same in any action or proceeding.

(3) In case of neglect occasioned by the sickness or absence of an officer of any corporation, joint stock company or association required to make said return, or for other sufficient reason, the state tax commission may allow such further time for making and delivering such return as it may deem necessary, not to exceed thirty days.

(4) If any of the corporations, joint stock companies or associations aforesaid shall fail or refuse to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association shall be liable to a penalty of not less than one hundred dollars and not to exceed five thousand dollars at the discretion of the court.

(5) Any officer of a corporation, joint stock company or association required by law to make, render, sign or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this act to be made, shall upon conviction be fined not to exceed five hundred dollars or be imprisoned not to exceed one year, or both, at the discretion of the court, with the cost of prosecution.

71.11. Incorrect returns by individuals; penalty for fraud and refusal to make returns

(1) Whenever it shall appear probable to the assessor of incomes or the county board of review herein provided for, that

any person other than a corporation, joint stock company or association has been over or under-assessed, or that no assessment had been made when one should have been made in any one or more of the next previous three years, such income tax assessor or county board of review may require such person to furnish such information as may be deemed necessary to enable them to ascertain the amount of taxable income received by such person during the year or years in question. Upon such information and such other information as they may be able to discover, they shall determine the true amount of taxable income received during the year or years under investigation. If all or any part of the amount so ascertained shall not previously have been assessed, the same shall be assessed and entered upon the assessment rolls in the year discovered and the normal tax thereon may be computed at twice the original rate. If it shall be found that the assessment was in excess of the actual amount of income received in any one or more of the three previous years, the income tax assessor or county board of review may make allowance as far as possible for such excess in the assessment of the year when such error in assessment shall be discovered. No additional assessment shall be made under this subsection without giving at least ten days' notice in writing of the proposed assessment to the person to be subjected thereto. Such notice may be served by mail.

(2) Any person other than a corporation, joint stock company or association, required to make an income tax return, who shall fail, neglect, or refuse to do so in the manner and form and within the time prescribed by this chapter, or shall make a return that does not disclose his entire taxable income, shall be assessed on such income as the assessor of incomes shall determine was received. In the case of wilful neglect to comply with the law in respect to making and filing an income tax return on the part of such person, the tax on such assessment shall be computed at twice the original rate.

(3) Any person, other than a corporation, joint stock company or association who fails or refuses to make a return at the time hereinbefore specified in each year or shall render a false or fraudulent return shall upon conviction be fined not to exceed five hundred dollars, or be imprisoned not to exceed one year, or

both, at the discretion of the court, together with the cost of prosecution.

71.12. Hearing of grievances

Any corporation, joint stock company or association subject to assessment by the state tax commission, feeling aggrieved by the decision of said commission regarding the assessment of its income, shall be granted the same rights of hearing and appeal as are now granted corporations assessed by said commission.

71.13. County board of review

(1) Appointment

The state tax commission shall appoint three resident taxpayers of each county to serve as a county board of review.

(2) Clerk: record of proceedings

The county clerk shall be clerk of such board, and shall keep an accurate record of all proceedings thereof, including a correct record of all changes in the assessment rolls made by the board. The county clerk shall take full minutes of all evidence given before the board; provided, however, that the board, with the approval of the assessor of incomes, may in cases where they deem it advisable, employ a stenographic reporter to take such evidence in shorthand, and extend the same in typewritten form. The county clerk shall preserve in his office a record of all such proceedings, minutes and evidence taken, and all documentary evidence offered. The expense of such stenographic reporter shall be borne by the county, and shall be paid by the county treasurer on the certificate of the assessor of incomes.

(3) Meetings of board: quorum: proceedings

(a) The county board of review of each county, constituting an assessment district, shall meet annually on the last Monday of July at ten o'clock A. M. at the courthouse in said county to hear complaints and to review the assessment of income made by the assessor. A majority shall constitute a quorum.

(b) In assessment districts composed of more than one county the board of review of the county designated by the assessor of incomes shall meet as provided above, and the board of

review of each remaining county of the district shall meet as soon thereafter as is possible for the assessor of incomes to be present. The date of such meeting shall be fixed by the assessor of incomes.

(c) Notice of the annual meeting of each county board of review shall be published in a newspaper of the county at least one week previous to such meeting.

(d) The board may adjourn from day to day, and from time to time, until its business is completed, but no adjournment other than from day to day shall be had except upon written request and for satisfactory cause shown.

(e) Attendance of witnesses and the production of books and papers before said board may be compelled by subpoena, issued by the clerk thereof, a justice of the peace or a court commissioner.

(4) **Hearing and determination**

(a) The board shall hear and examine, and permit the assessor to examine, any aggrieved or other person upon oath who shall appear before it in relation to any assessment or omission of income, and may increase or lessen the amount of any income assessed, if satisfied from the evidence submitted and the statements of the assessor that such change should be made.

(b) The board shall not increase any assessments nor assess any income not on the roll without notice in writing to the person liable for payment of the tax thereon, or his agent, if either be resident of the county, of such intention in time to appear and be heard before the board in relation thereto.

71.14. Exclusive original jurisdiction

No person subject to assessment by the county assessor shall be allowed in any action or proceeding to question any assessment of income, unless objections thereto shall first have been presented to the county board of review in good faith and full disclosure made under oath of any and all income of such party liable to assessment.

71.15. Appeal and review

(1) Any person dissatisfied with any determination of the county board of review may appeal within twenty days to the state tax commission, to whom a copy of the record of the board shall be certified, together with all evidence or a copy thereof, relating to such assessment.

(2) The tax commission shall review such assessments from the record thus submitted and shall make necessary corrections and certify its conclusion to the county clerk, who shall duly notify the person liable for the tax and enter upon the assessment roll any change made by the commission.

71.16. Computation of corporation taxes

(1) The state tax commission shall complete the assessment of income for each corporation, joint stock company, and association on or before the fifteenth day of October in each year, and compute the tax thereon, and shall thereupon forthwith certify to each county clerk a statement of the assessment of each corporation, joint stock company and association in his county and the amount of tax levied against each.

(2) The state tax commission shall submit in their biennial report the amount of income tax collected for each county in the state and shall designate the several general classes of property from which the incomes were received, the cost to the state and each county for the administration of the law and all such facts as shall be required to give a definite understanding of the financial operations of the law.

71.17. Computation of tax on individuals: certified to clerks

(1) The tax upon the income of persons other than corporations, joint stock companies and associations shall be computed by the county clerk, assisted by the assessor of incomes and said clerk shall on or before November first, certify, excepting in cities of the first class, to each town, city, and village clerk the names of all persons whose incomes are assessed in his own town, city or village, and the amount of tax levied against each such person, and such amount shall be entered by the town, city and village clerks in a separate column designated "income tax" upon

the tax roll of the year, and shall be collected and paid as personal property taxes are now collected and paid.

(2) The county clerk shall certify in a similar manner to the tax commissioner of each city of the first class located within the limits of the county and the tax commissioner shall proceed in the manner previously prescribed for the city clerk to make out the tax roll.

71.18. Situs of taxation

The place at which the income tax herein provided for shall be assessed, levied and collected shall be determined as follows:

(1) In their return for purposes of assessment persons deriving incomes from within and without the state, or from more than one political subdivision of the state, shall make a separate accounting of the income derived from without the state and from each political subdivision of the state in such form and manner as the tax commission may prescribe.

(2) The entire taxable income of every person deriving income from within and without the state or from within different political divisions of the state, when such person resides within the state, shall be combined and aggregated for the purpose of determining the proper exemptions and proper rate of taxation. The taxable income so computed shall be assessed, and taxes at such rate shall be paid in the several towns, cities and villages in proportion to the respective amounts of income derived from each, counting that part of the income derived from without the state when taxable as having been derived from the town, city or village in which said person resides.

(3) The income tax of every nonresident of this state shall be paid in the taxing district from which the income is derived. When such income is derived from more than one taxing district of the state, the tax shall be computed on the aggregate income received from all districts and shall be certified for collection to the several taxing districts in proportion to the amount of income received from each under such rules and regulations as the tax commission may prescribe.

(4) All laws not in conflict with the provisions of this act, relating to the assessment, collection and payment of taxes on per-

sonal property, the correction of errors in assessment and tax rolls, the compromise or cancellation of illegal taxes and the refund of moneys paid thereon, shall be applicable to the income tax herein provided for; but no town or village board or common council, nor the county officers specified in 75.60 shall compromise or cancel any income tax or any part thereof or refund any moneys paid thereon without the written approval of the assessor of incomes who made the assessment or of the tax commission in the case of assessments made by it, specifying the defect in the assessment or tax proceeding and the amount of taxable income which should have been assessed and the amount of the taxes justly chargeable thereto.

(5) In the return of delinquent income taxes as required by law the entire amount of each such delinquent income tax shall be returned to the county treasurer without division or apportionment. All laws, including the provisions of any city charter in conflict with this subsection are hereby repealed.

(6) Whenever any city, town or village shall have collected an income tax that under the income tax law ought not to have been collected by such city, town or village, but by the provisions of the income tax law should have been collected by another town, city or village, such tax shall be paid to the town, city or village entitled thereto; provided, however, that no such payment shall be made except on the written approval of the assessor of incomes who made the assessment, or of the tax commission in the case of assessments made by it, specifying the defect in the assessment or tax proceeding; and provided further that a claim for such tax shall have been made within one year after the collection of the tax. If any portion of such taxes so refunded shall be properly chargeable to the county and state, they shall be so charged, and such town, city or village shall be credited by the county treasurer on the settlement with the proper treasurer for the taxes of the ensuing year, with the whole amount of such state and county taxes so paid into the county treasury; and the county treasurer shall also be allowed by the state treasurer the amount of said taxes so illegally collected and paid in his settlement with the state treasurer, next after the payment of such claim.

71.19. Apportionment of revenue

(1) All income taxes collected in cash over and above the personal property offset authorized by section 71.21 of the statutes shall be divided as follows, to-wit: Ten per cent to the state, twenty per cent to the county, and the balance to the town, city or village in which the tax was assessed, levied and collected, except that when such balance exceeds two per cent of the equalized value of such town, city or village under section 70.61, such excess shall be paid to the county to be distributed and paid to the several towns, cities and villages of the county, according to the school population therein. The same shall be remitted and accounted for in the same manner as the state and county taxes collected from property are remitted and paid, except that income taxes returned delinquent shall not be charged to the county nor credited to the town, city or village returning the same.

(2) Out of the first moneys received and retained from cash collected from such income taxes in any city of the first class, however organized, there shall be transferred and paid to the firemen's pension fund provided for by chapter 165 of the laws of 1903 and laws amendatory thereof, a sum each year sufficient to make the said firemen's pension fund on the first day of March in each year not less than one hundred and seventy-five thousand dollars, to be used for the purpose of paying pensions to disabled and superannuated members of the fire department and their beneficiaries mentioned in said laws. The county treasurer shall account for and pay all delinquent taxes thereafter collected by him, upon the basis hereinbefore provided, to the state treasurer, and to the several town, city, and village treasurers entitled thereto quarterly thereafter.

71.195. Advance payment of taxes

County treasurers are authorized to accept advance income taxes and surtaxes on incomes from individuals or corporations desirous of making such payments at any time before the same shall become due and payable. No such advance payments shall be accepted by the county treasurer unless a certification is furnished by the Wisconsin tax commission, in case of assessments made by it, or the assessor of incomes in case of assessments made by him, showing the amount of income taxes to become

due and the districts which are entitled thereto. Advance payment of taxes under this provision shall not relieve any individual or corporation from additional taxes which may result from subsequent legislation or from additional taxable income disclosed or discovered subsequent to the assessment. The county treasurer, upon receipt of such advance taxes, shall enter the amount received on a ledger account termed "Advance Income Taxes" and on or between January 1 and January 5, next succeeding the date of payment, the county treasurer shall pay to the local treasurers of the several districts named in the certificates of the tax commission, or assessor of incomes, the full amount of taxes payable to each of such districts giving the names of the several taxpayers paying such taxes and the amount paid by each. The county treasurer shall take from the local treasurers to whom such payments are made separate receipts in the usual form which he shall deliver to the several persons entitled thereto when the same shall be called for.

71.20. **Penalty for divulging information**

(1) No commissioner, assessor of incomes, deputy, member of a county board of review, or any other officer, agent, clerk or employe shall divulge or make known to any person in any manner any information whatsoever obtained directly or indirectly by him in the discharge of his duties or permit any income return or copy thereof or any paper or book so obtained to be seen or examined by any person except as provided by law; provided, that any and all information contained in income tax returns and in the statements and correspondence pertaining thereto relating to the ownership or value of property shall be furnished or made accessible to all public officials charged with the duty of assessing the same for taxation or of supervising the assessment thereof, under such rules and regulations as the tax commission shall prescribe, but no information so received shall be divulged by any such official except as may be necessary in the proper performance of his duties; and provided further that in any action or proceeding brought for the collection, remission, cancellation or refund of the whole or any part of a tax assessed under sections 71.01 to 71.24, or for enforcing the penalties prescribed for making false or fraudu-

lent returns, any and all information contained in such returns may be furnished or made accessible to the officers or representatives of the state or municipal district charged with the duty of prosecuting or defending the same, under such rules and regulations as the tax commission shall prescribe; and all such returns and the statements and correspondence relating thereto may be produced in evidence in any action or proceeding, civil or criminal, directly pertaining to such returns or the assessment made thereon.

(2) Any officer, agent, clerk or employe violating any of the provisions of this section shall upon conviction thereof be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by imprisonment in the state prison for not more than two years, at the discretion of the court.

(3) Such officer, agent, clerk or employe upon such conviction shall also forfeit his office or employment and shall be incapable of holding any public office in this state for a period of three years thereafter.

(4) Nothing herein shall be construed as preventing the assessment roll, the tax roll and all proceedings had before the county board of review and all evidence taken at such hearing from being open to public inspection at such times and under such conditions as the state tax commission may direct.

71.21. Personal property credited

Any person who shall have paid a tax assessed upon his personal property during any year shall be permitted to present the receipt therefor to the tax collector, together with any similar receipts for personal property taxes paid by members of his family whose incomes have been assessed to him, and have the same accepted by the tax collector to their full amount in the payment of income taxes assessed against such person during said year; provided, that no receipt for taxes paid on the shares of stock in any state, national or mutual savings bank or trust company shall be allowed as an offset against any income tax within the meaning of this section. If in any year a person failed or neglected, or shall in the future fail or neg-

lect, to present his personal property tax receipt in payment of income tax as provided by this section, and the council of the city or board of the town or village to which such taxes shall have been paid is satisfied that such person was entitled to such offset, and that by reason thereof, such person has paid to the town, city or village an amount in excess of that which he was legally obliged to pay, it may within two years after such payment remit such excess to such person without interest and charge the state and county for their respective proportions of such excess as provided in section 74.73.

71.22. **Rules and regulations**

(1) The state tax commission is hereby empowered to make such rules and regulations as it shall deem necessary in order to carry out foregoing provisions.

Clerks and Specialists

(2) The state tax commission is hereby authorized to employ such clerks and specialists as are necessary to carry into effective operation this act. Salaries and compensations of such clerks and specialists shall be charged to the proper appropriation for the tax commission.

71.23. **Reimbursement of unlawful income tax collections**

Whenever in any action for the recovery of an unlawful income tax, judgment is rendered against the city, town or village treasurer for such tax, the city, town or village shall reimburse such treasurer for such sums of money as may be recovered against him in any court, with the costs and expenses of suit, for any such income tax collected by him, and such city shall be reimbursed for the county's and state's share of such tax in the manner provided in section 74.73.

71.24. **Correction of errors**

Whenever an error has been made in any income tax assessment that shall be discovered after the income tax roll has been certified to the county clerk, the tax commission, in case of assessments made by it, and the assessor of incomes, in case of assessments made by him, may correct such error at any time before the tax becomes delinquent by certifying the tax properly due, or if no tax is due, by certifying that fact to the treasurer

of the town, city or village where the same is payable. Whereupon such treasurer shall enter upon the tax roll the words "reduced to.....dollars," or "increased to.....dollars," or "canceled," "by direction of the assessor of incomes," or "by direction of the tax commission," as the case may be, and shall be required to account in his annual settlement with the county treasurer only for the amount appearing on the roll as corrected. No assessment shall be increased under this section except on five days' notice to the person to be subjected thereto.

SURTAX LAWS

Soldiers' bonus

SECTION 7. (1) In addition to the normal tax imposed by section 71.06 of the statutes, there shall be levied, collected and paid upon the incomes of all persons, except as otherwise provided by law, a surtax on taxable income computed at the following rates, to-wit:

(a) On the fourth one thousand dollars or any part thereof, one and three-fourths per cent;

(b) On the fifth one thousand dollars or any part thereof, two per cent;

(c) On the sixth one thousand dollars or any part thereof, two and one-half per cent;

(d) On the seventh one thousand dollars or any part thereof, three per cent;

(e) On the eighth one thousand dollars or any part thereof, three and one-half per cent;

(f) On the ninth one thousand dollars or any part thereof, four per cent;

(g) On the tenth one thousand dollars or any part thereof, four and one-half per cent;

(h) On the eleventh one thousand dollars or any part thereof, five per cent;

(i) On the twelfth one thousand dollars or any part thereof, five and one-half per cent;

(j) On any sum taxable as income in excess of twelve thousand dollars, six per cent.

(2) In addition to the normal tax imposed by section 71.06 of the statutes, there shall be levied, collected and paid upon the incomes of corporations, joint stock companies or associations, except as otherwise provided by law, a surtax on taxable income computed at the following rates, to wit:

On the first one thousand dollars or any part thereof, two per cent;

On the second one thousand dollars or any part thereof, two and one-half per cent;

On the third one thousand dollars or any part thereof, three per cent;

On the fourth one thousand dollars or any part thereof, three and one-half per cent;

On the fifth one thousand dollars or any part thereof, four per cent;

On the sixth one thousand dollars or any part thereof, five per cent;

On the seventh one thousand dollars or any part thereof, six per cent;

On all taxable income in excess of seven thousand dollars, six per cent.

(3) In computing the tax upon income of corporations, joint stock companies or associations, there shall be deducted before such tax is computed from the net income an amount equal to six per cent of its capital stock, surplus and undivided profits.

Educational bonus

At the special session of the legislature in September, 1919, an act was passed, imposing a second or additional surtax on incomes received in 1918 and on incomes received annually thereafter for a term of four years. That part of the act providing for the additional surtax reads as follows:

SECTION 5. (1) In addition to the normal tax imposed by section 71.06 of the statutes, and the surtax imposed by chapter 667 of the laws of 1919, there shall be levied, collected and paid upon the incomes of all persons, annually for five years, except as otherwise provided by law, a surtax on taxable income computed at the following rates to wit:

(a) On the fourth one thousand dollars or any part thereof, seven twentieths of one per cent;

(b) On the fifth one thousand dollars or any part thereof, four-tenths of one per cent;

(c) On the sixth one thousand dollars or any part thereof, five tenths of one per cent;

(d) On the seventh one thousand dollars or any part thereof, six-tenths of one per cent;

(e) On the eighth one thousand dollars or any part thereof, seven-tenths of one per cent;

(f) On the ninth one thousand dollars or any part thereof, eight-tenths of one per cent.

(g) On the tenth one thousand dollars or any part thereof, nine-tenths of one per cent;

(h) On the eleventh one thousand dollars or any part thereof, one per cent;

(i) On the twelfth one thousand dollars or any part thereof, one and one-tenth per cent;

(j) On any sum taxable income in excess of twelve thousand dollars, one and two-tenths per cent.

(2) In addition to the normal tax imposed by section 71.06 of the statutes, and the surtax imposed by chapter 667, laws of 1919, there shall be levied, collected and paid upon the incomes of corporations, joint stock companies or associations, except as otherwise provided by law, annually for five years, a surtax on taxable income computed at the following rates, to wit:

On the first one thousand dollars or any part thereof, four-tenths of one per cent;

On the second one thousand dollars or any part thereof, five-tenths of one per cent;

On the third one thousand dollars or any part thereof, six-tenths of one per cent;

On the fourth one thousand dollars or any part thereof, seven-tenths of one per cent;

On the fifth one thousand dollars or any part thereof, eight-tenths of one per cent;

On the sixth one thousand dollars or any part thereof, one per cent;

On the seventh one thousand dollars or any part thereof, one and two-tenths per cent;

On all taxable income in excess of seven thousand dollars, one and two-tenths per cent.

(3) In computing the tax upon income of corporations, joint stock companies or associations, there shall be deducted before such tax is computed from the net income an amount equal to six per cent of its capital stock, surplus and undivided profits at the beginning of the taxable year.

(4) The first surtax provided for herein shall be upon the income received during the year ending December 31, 1918, or corresponding fiscal year for which the taxpayer reported his income under the general income tax law and annually thereafter for four years, and shall be returned, assessed and collected in the same manner and at the same time as is provided for the return, assessment and payment of the normal income tax provided for under sections 71.01 to 71.23, both inclusive, except as otherwise herein provided.

(5) Deductions and exemptions as are provided by law in the assessment of the normal income tax under section 71.06 shall be the same with respect to the assessment of this surtax, but said deductions and exemptions shall not be additional thereto and shall only be made once.

(6) In the collection of said surtax the tax collector shall give his receipt therefor and there shall be no offset upon the personal property tax, and section 71.21 shall not apply to said surtax.

(7) The whole amount collected as surtax shall, through the same channels as other income taxes are paid, be paid into the state treasury, and section 71.19 of the statutes shall not apply to said surtax. The amount so paid into the state treasury shall be available for the purposes of this act.

Teachers' retirement fund

20.251 (1) In addition to the income tax imposed by sections 71.01 to 71.23 of the statutes and the surtax imposed by section 5 of chapter 5 of the laws of the special session of 1919, there shall be levied, collected, and paid upon the

incomes of all individuals, co-partnerships and fiduciaries, except as otherwise provided by law, a surtax on net income computed at one sixth the rates prescribed in subsection 1 of section 1087m—6.

20.251 (2) In addition to the income tax imposed by sections 71.01 to 71.23 of the statutes and the surtax imposed by section 5 of chapter 5 of the laws of the special session of 1919, there shall be levied, collected and paid upon the incomes of corporations, joint stock companies or associations, except as otherwise provided by law, a surtax on net income computed at one-sixth the rates prescribed in subsection 2 of section 71.06.

(3) The surtax provided for herein shall be upon the net income in excess of three thousand dollars received during the calendar year ending December 31, 1920, or corresponding fiscal year for which the taxpayer reported his income under the general income tax law, and annually thereafter, and shall be returned, assessed, and collected in the same manner and at the same time as is provided for the return, assessment and payment of the income tax provided for under sections 71.01 to 71.23, both inclusive, except as otherwise herein provided.

(4) Net income as defined by this act shall be computed in the same manner as the income taxable under sections 71.01 to 71.05 of the statutes, both inclusive.

(5) In the collection of said surtax the tax collector shall give his separate receipt therefor, and section 71.21 shall not apply to said surtax.

LAWS FOR REFUND AND COMPROMISE OF INCOME TAXES

County to refund unjust tax

SECTION 74.64. If any person, within two years after the payment of any state or county tax by him, can satisfactorily show to the county board that the same was improperly assessed or was paid by mistake when it was not justly chargeable, the said board shall order the same to be repaid by the county treasurer;

and if the taxes so refunded or any portion thereof be properly chargeable to any town, city or village it shall be so charged.

Recovery of illegal taxes; limitation

SECTION 74.73. 1. Any person aggrieved by the levy and collection of any unlawful tax assigned against him may file a claim therefor against the town, city, or village, whether incorporated under general law or special charter, which collected such tax in the manner prescribed by law for filing claims in other cases, and if it shall appear that the tax for which such claim was filed or any part thereof is unlawful and that all conditions prescribed by law for the recovery of illegal taxes have been complied with, the proper town board, village board, or common council of any city, whether incorporated under general law or special charter, may allow and the proper town, city or village treasurer shall pay such person the amount of such claim found to be illegal and excessive. If any town, city, or village shall fail or refuse to allow such claim, the claimant may have and maintain an action against the same for the recovery of all money so unlawfully levied and collected of him. Every such claim shall be filed; and every action to recover any money so paid shall be brought within one year after such payment and not thereafter.

2. In case any such town, city, or village shall have paid such claim or any judgment recovered thereon after having paid over to the county treasurer the state and county tax levied and collected as part of such unlawful tax, such town, city, or village shall be credited by the county treasurer, on the settlement with the proper treasurer for the taxes of the ensuing year, the whole amount of such state and county tax so paid into the county treasury with the county's and state's proportionate share of the taxable costs and expenses of suit; and the county treasurer shall also be allowed by the state treasurer the amount of state tax so illegally collected with the state's proportionate share of the taxable costs and expenses of suit and paid in his settlement with the state treasurer next after the payment of such claim or the collection of such judgment. If any part of such unlawful tax shall have been paid over to any school district before the payment of such claim or judgment, such town shall charge the same to such district with the proportionate share

of the taxable costs and expenses of suit, and the town clerk shall add the same to the taxes of such school district in the next annual tax; provided, however, that no claim shall be allowed and no action shall be maintained under the provisions of this section unless it shall appear that the plaintiff has paid more than his equitable share of such taxes.

SECTION 37.259. Whenever it shall be certified to the state treasurer by the Wisconsin tax commission as to corporations, joint stock companies and associations or by the proper assessor of incomes as to copartnerships, individuals or fiduciaries, that excess payment has been made for the soldier bonus tax or soldier education surtax during any of the three years next preceding the date of such certificate then the said state treasurer shall within five days after receipt of such certificate draw an order against the fund in the state treasury into which such excess was paid, reimbursing such payor for the amount of such excess payment so certified.

(20.06) (3) Taxes collected and paid into the state treasury in excess of lawful taxation, when claims therefor have been established as provided in sections 71.23, 72.08, * * * 74.73 and 37.259 of the statutes.

County May Compromise Illegal Taxes

SECTION 75.60. If it shall appear from any tax roll or tax proceeding that any sum of money is due from any person or is charged against any lands or other property, and such taxes have been returned as delinquent to the county treasurer of the proper county, and such person or the owner of the lands or property so charged with such taxes shall claim such taxes to be illegal for any cause the county treasurer, county clerk and district attorney of such county may, if they shall deem that there is reasonable cause to believe such taxes illegal, compromise with such person or owner and receive in lieu of the whole tax so appearing due or charged as aforesaid such part thereof as the said county treasurer, county clerk and district attorney, or a majority of them, shall determine to be equitable and for the best interest of such county.

See also Sec. 71.18 (4) p. 23.

CHAPTER II.

Explanatory Notes

Annual income taxable

Section 71.01 as amended by the legislature of 1921 extends to all corporations and to individuals, copartnerships and fiduciaries the privilege of reporting incomes for a fiscal year other than a calendar year at the discretion of the tax commission. In order to change from a fiscal to a calendar year, or the reverse, it will be necessary to report once for a period greater or less than a year, and no change should be attempted without first getting the permission of the tax commission fixing the period for which the report should be made. Individuals, copartnerships and fiduciaries should make their applications to the assessor of incomes of their districts.

What Is Income

The word "income" as used in the constitution means the profit or gain derived from capital or labor or both combined. *State ex rel. Wisconsin Trust Co. vs. Widule,* 164 Wis. 56. It may be money or that which is convertible into money. *Income Tax Cases,* 148 Wis. 456.

Salaries of state and federal officers

The amendment to section 1, article VIII of the constitution authorizes the legislature to tax incomes in any case where the the state has power to impose such a tax and hence includes the power to tax the salaries of all state and local officers, including the salaries of circuit judges elected before the income tax law was adopted. *State ex rel. Wickham vs. Nygaard,* 159 Wis. 396. In the same case the court intimated that salaries of federal officers and compensation of employes of the federal government are not subject to taxation under state income tax laws and the attorney general has advised to the same effect. See also *Dobbins vs. Erie County,* 16 Peters 435, and *Purnell vs. Page,* 133 N. C. 125. Neither the state nor federal government has power to tax the agencies or instrumentalities employed by the other in carrying on its governmental functions.

It would seem to follow from this principle that interest on United States bonds or other securities issued by the federal government is not taxable under our income tax law and assessors of incomes are advised to omit such income in making their assessments.

Traveling Expenses

There may be deducted from gross income necessary traveling expenses, including the entire amount expended for meals and lodging while away from home in pursuit of the trade, business or vocation which produces the income reported, but not including street car fare and other transportation expenses in going between the taxpayer's home and place of business or employment.

Interest

Interest received by a resident of this state from all sources is taxable. Because it is paid by a debtor residing in another state is no ground for exemption.

Dividends

Dividends paid by a corporation out of a surplus consisting of appreciation of capital assets are taxable income to the stockholders receiving them when such stockholders are residents of this state. The distribution of such appreciation as ordinary dividends is equivalent to a realization of the increased value of the capital stock due to the appreciated value of the assets of the corporation. To the stockholder at least, such dividends are clearly taxable income.

The provision in the Wisconsin income tax law making stock dividends taxable is constitutional notwithstanding the fact that the Supreme Court of the United States has decided that stock dividends are not taxable income under the federal income tax law. *State ex rel. Dulaney vs. Nygaard,* 182 N. W. Rep. 884.

A reserve set up out of gross income and maintained for the purpose of making good any loss of capital assets on account of depletion or depreciation is not a part of its surplus out of which ordinary dividends may be paid. A distribution made from such a reserve will be considered a liquidating dividend and will constitute taxable income to a stockholder to the extent that the amount so received is in excess of the cost or fair market value as of January 1, 1911 of his shares of stock. No distribution,

however, will be deemed to have been made from such a reserve except to the extent that the amount paid exceeds the surplus and undivided profits of the corporation. Upon a subsequent sale of such stock the profit will be in excess of the selling price over the cost of the stock or its fair market value on January 1, 1911 acquired prior thereto after applying on such cost or value the amount of any such capital distribution.

Methods of accounting

In all cases in which the production, purchase or sale of merchandise of any kind is an income producing factor inventories are necessary and no accounting in regard to purchases and sales will correctly reflect the income except an accrual method.

Approved standard methods of accounting will be regarded ordinarily as clearly reflecting income subject to modifications to meet specific provisions of the statute, if all items of gross income and all deductions are treated with reasonable consistency.

The statute limits the deduction for federal income and excess profit taxes to actual payment within the year covered by the income tax return, and also provides that reserves to take care of anticipated or possible losses are not deductible from gross income. The income as reflected by the books may require adjustment in order to show taxable income and in such cases a reconciliation should be furnished.

Income from within and without the state: how apportioned

A resident of this state is taxable on all his income derived from property located and business transacted within the state and also for compensation for personal services and interest on land contracts, mortgages, bonds and securities, and dividends paid either in cash or stock whether or not the persons or corporations paying such interest or dividends are residents of this state. Thus, interest received by a resident of this state on a South Dakota mortgage or a dividend from a New York corporation is taxable income.

A nonresident is taxable on all income derived from property located and business transacted within the state but not on income derived from personal services, land contracts, stocks. mortgages, bonds and securities.

Income from rentals, royalties, gains or profits from the operation of any farm, mine, or quarry is not apportionable for the

reason that such income has its situs for taxation purposes at the place where the property from which it is derived is located. Income from personal services, land contracts, mortgages, stocks, bonds, and securities is not apportionable for the reason that such income has its situs at the residence of the recipient. Non-apportionable income and the property from which it is derived must, therefore, be disregarded in making an apportionment of income from sources within and without the state. If such income is assignable to Wisconsin because of its situs, it should be added to the apportionable income assigned to Wisconsin: if not, it is not Wisconsin income, and therefore, not taxable.

In the case of manufacturing corporations the process of apportionment under the statute quoted is as follows: To get the numerator of the fraction take the full book value of the property owned in Wisconsin on December 31 of the income year, excluding land contracts, mortgages, stocks, bonds and securities, farms, mines, quarries and property yielding rents or royalties and to this amount add gross sales in Wisconsin. To the sum so obtained add the factory cost of all products manufactured in Wisconsin during the year. To get the denominator apply the same process to property and business everywhere. The following example will illustrate the process of allocating income and computing the tax:

An Illinois corporation with principal office in Chicago has manufacturing plants and sales offices in Chicago and Milwaukee. The net income for a given year is $110,000 of which $2,500 is derived from dividends on stock in a subsidiary corporation, $2,500 interest from industrial bonds, $5,000 rent from Wisconsin real estate, and $100,000 from the manufacturing business. The corporation return gives the following apportionment data:

	In Wisconsin	Within and without Wisconsin
Full book value of tangible property on December 31, except as stated above	$200,000	$ 500,000
Gross sales	400,000	1,000,000
Factory cost of goods manufactured	320,000	800,000
Total	$920,000	$2,300,000

$920,000÷$2,300,000=40%=Percentage of income from manufacturing business taxable in Wisconsin.

The income in the form of dividends and interest from industrial bonds follows the residence of the recipient. The Wisconsin rent follows the situs of the property. The tax liability of the corporation is computed as follows:

Net Income		$110,000
Deduct: Non-apportionable income		
From dividends	$2,500	
From industrial bond interest	2,500	
From Wisconsin rent	5,000	10,000
Apportionable income		100,000
Per cent to Wisconsin		40%
Amount to Wisconsin		40,000
Wisconsin rent		5,000
Income taxable in Wisconsin		45,000

The rule of apportionment applies to individuals as well as corporations.

The factory cost of goods manufactured during the year should comprise the cost of the following items:

Raw materials used, including freight, drayage, insurance, and storage charges on same;

Direct factory labor;

Indirect factory labor, such as wages of janitors, watchmen, and foremen;

Factory power, heat and light;

Property taxes paid or accrued;

Factory fire, accident and compensation insurance;

Depreciation of factory buildings and equipment;

Rent of factory actually paid; (No charge should be made for rent of buildings owned.)

A reasonable proportion of general administration expense;

Sundry factory expense;

Adjustment for increase or decrease in the value of the inventory of goods in process.

Certain corporations, such as tobacco, milk, milk condensing, vegetable canning, pickle, ice, and lumber companies regularly and continually buy or derive their raw material from Wisconsin through established branches or receiving stations. Such products are often subjected to certain processing or partial manufacturing in Wisconsin. The following are examples:

Stemming, sorting, and packing leaf tobacco;
Pasteurizing and separating milk;
Salting and curing pickles;
Cutting and packing ice;
Cutting, peeling and loading fence posts, railroad ties, telephone poles, and piling, and logging operations.

The raw material or the partly finished product is then shipped out of the state where manufacture is completed and sale is consummated.

The income of such corporations is apportionable, and the following apportionment data should be furnished on the income return form:

1. Book value of tangible property, exclusive of property yielding rents, royalties, and farms, mines, and quarries;
   (a) In Wisconsin;
   (b) Within and without Wisconsin.
2. Gross sales during the year;
   (a) In Wisconsin;
   (b) Within and without Wisconsin.
3. (a) Cost of purchases or cost of production in Wisconsin. In cases where there is no processing or partial manufacture, report the cost of the raw material purchased. In cases of processing or partial manufacture, report the cost of production.
   (b) Cost of purchases or cost of production within and without Wisconsin if not a strictly manufacturing corporation, or factory cost of goods manufactured during the year without Wisconsin if a manufacturing corporation, which item will include the total cost of purchases and cost of production.

The income received by a resident of the state from a copartnership of which he is a member and which is doing business and has all its property located outside the state, all the profits distributed being derived from sources without the state, is not taxable under this statute. *State ex rel. Arpin vs. Eberhardt,* 158 Wis. 20–22.

The income of a domestic manufacturing corporation derived from the sale of its products manufactured in this state to customers in this and other states, whether delivered directly from the factory to such customers or shipped to branch houses in other states and thence delivered to customers residing outside of the state on sales made either by the home office or by the branch houses, is income "derived from business transacted and property located within this state." The fact that the business so conducted involves transactions in interstate commerce does not affect the situs of the income; nor does the imposition by the state of a tax upon such income contravene sec. 8, art. 1, Const. of U. S., conferring upon Congress the power to regulate commerce between the states. That part of the income of such a corporation which is derived from goods produced and purchased outside of the state and shipped, either directly or by way of the home office in this state to branch houses in other states and hence sold and delivered to customers without the state, is not attributable to business transacted within the state and is not taxable under the statute. *United States Glue Co. vs. Oak Creek,* 161 Wis. 211; 247 U. S. 321.

Both purchases and sales are factors in producing income, and where purchases are made in Wisconsin by one partner and sales in New York by another, that part of the income resulting from Wisconsin purchases is taxable. In order to ascertain the amount of income to be apportioned to Wisconsin, both purchases and sales within and without the state must be taken into consideration. *Village of Westby vs. Bekkedahl,* 172 Wis. 114.

Sales

Profits derived from the sale of property are taxable as income of the year in which the sale was made. *Brewster vs. Walsh, U. S. Fed. Rep.,* 207—17, reversing the decision of the United States District Court of Connecticut.

Where capital assets are sold, there must be included in gross income for the year in which the sale was made, the amount of the excess of the sales price over the fair market value of such assets as of January 1, 1911, if acquired prior to that date, or their cost if acquired on or after that date.

In every case, however, in ascertaining the gain or loss, the cost of the assets or the fair market value as of January 1,

1911, of the assets acquired prior thereto, should first be reduced by the amount of any charges for depreciation, depletion and other losses that have been or should have been made. If the purchaser takes over all the assets and assumes all the liabilities the amount so assumed is part of the purchase price.

In the case of the sale of property, the fact that other property is taken in part payment does not change the rule as to profits subject to income tax. The property taken in exchange should be valued at the agreed or market price. *State ex rel. Howe vs. Lee,* 172 Wis. 381.

Deductions

Salaries

The tax commission and assessors of income are authorized to disallow or reduce salaries which in their judgment are excessive or when the services rendered did not contribute to the income reported. All persons doing business in the state, whether liable for an income tax or not, are required to furnish a list of their employes and officers residing in Wisconsin who received a compensation of more than seven hundred dollars a year, and the amount paid to each. Failure to furnish such information will defeat the deduction.

Bonuses to employees

Cash bonuses voluntarily paid to employes over and above their regular wages may be deducted by the employer as expenses and, in consequence, should be reported as wages in making their individual return by employes. The names and addresses of the parties receiving such bonuses should be reported by the person paying the same or the deduction cannot be allowed.

Income from personal services: how reported

Salaried men, professional men, and firms and corporations rendering personal service may file income tax returns on a cash receipt basis. Under this system of reporting, worthless debts arising from unpaid wages, salaries, rent, interest, and similar items of taxable income will not be allowed as a deduction because such items have not been reported previously as income.

The income of a law firm is taxable in the year in which the same is received regardless of the time when the services which produced such an income were performed. A division of the entire income of the law firm among the partners is a reasonable allowance to them for their services. *State ex rel. Houghton vs. Phelps,* 171 Wis. 13.

Money from life insurance

Money paid to the assured during his lifetime on settlement of an insurance policy, and money paid to a corporation or co-partnership on a policy on the life or lives of its officers or members issued for its benefit, less the aggregate amount of premiums paid by the assured or the corporation or co-partnership for whose benefit the policy is issued, is taxable income and should be reported as such by the recipient.

Expense of administration of estates

Expenses incurred in the probate of an estate, such as administrators', executors' and attorneys' fees and inheritance taxes are not proper deductions in computing annual income. Inheritance taxes are excluded by the express letter of the statute and the other expenses have no relation to the income of the current year. The services of executors, administrators, attorneys, and appraisers mainly relate to the adjustment of claims, devolution of title and conservation of the property of the estate and are, therefore, proper charges against the corpus. Such expenses are denied by the Internal Revenue Department in administering the federal income tax law and the tax commission has repeatedly ruled that they are not allowable under the Wisconsin law. On the other hand, if the executor or administrator continues the business of the deceased, all ordinary expenses incident to carrying on the business during the year are deductible to the same extent as if the business had been conducted by the former owner.

Repairs

Payments made for additions or improvements are not "ordinary or necessary expenses" and are not deductible from income. "Repairs" properly defined are deductible, but renewals

or replacements of entire units of property, such as machines, are properly covered by depreciation, past or current, do not constitute "repairs," and cannot be deducted from income.

Depreciation

Depreciation, if claimed as a deduction, should be entered on the corporation books to prevent confusion and duplication in returns.

Depreciation cannot be allowed on inventories or stock in trade. Inventories should be valued at (a) cost or (b) cost or market whichever is lower, thus automatically taking care of any decline in value. Moreover, the inventories at the beginning and end of the year must be on the same basis. If, at the beginning of the year the stock is inventoried at cost, it must be so inventoried at the end of the year.

Depreciation is limited, first, to that occurring during the year in which the income is earned; second, to that of property from which the income is derived; third, to that resulting from "use, wear and tear." Furthermore, it must be reasonable in amount. Unless depreciation claimed falls within these limitations it cannot be allowed as a deduction.

In arriving at the proper amount to be allowed for depreciation the factors to be considered are cost and estimated physical life of the property depreciated. The first factor can usually be determined without difficulty. The second can only be approximated. On pages 70—72 of this pamphlet will be found tables of depreciation which experience has proved to be fairly correct. Taxpayers in making returns are requested to follow these tables.

No depreciation of "good will" can be allowed as a deduction. The life of "good will" is indeterminate and in any case would be a mere guess. Neither does it deteriorate from "use, wear and tear." In fact it not infrequently happens that the "good will" of a business is increasing in value while it is being charged off.

In making a return for income taxation the lessee of a mine on a royalty basis is not entitled to make any deductions for ore depletion in addition to the sum paid as royalty. Even if

the lease or right to mine is perpetual, it is not, for purposes of income taxation equivalent to ownership. *Klar Piquett Mining Co., vs. Platteville,* 163 Wis. 214.

Amortization

Notwithstanding the law makes no specific provision for deduction on account of the amortization of the cost of property which it is definitely known will become valueless at the end of a fixed period, the commission has held that in certain cases such deductions may be allowed, as in the case of the cost of leaseholds and permanent improvements paid for by a lessee and which revert to the lessor on the termination of the lease. When a corporation sells its own bonds at a discount such discount may be amortized over the life of the bonds. Likewise, if such bonds are sold at a premium the premium should be amortized in the same manner and reported as income. This rule, however, does not apply to a case of a corporation buying, selling and dealing in its own securities after they have been issued and are in the hands of the public.

Obsolescence must not be confused with amortization or depreciation. The terms have an entirely different meaning. Anticipated losses by reason of obsolescence or depreciation cannot be foretold either in point of time or amount. Such anticipated loss would be purely speculative and frequently would never occur, and except in one case cannot be allowed as a deduction. The exception is in losses resulting from depreciation due to "use, wear and tear" which is expressly allowed by statute.

Depletion of timber

A reasonable deduction from gross income for the depletion of timber is permitted, based (a) upon cost if acquired after January 1, 1911 or (b) upon the fair market value on January 1, 1911 if acquired prior thereto.

In cases where timber was acquired prior to January 1, 1911 and has been entered on the taxpayer's books at the fair market value on March 1, 1913, in accordance with the regulations promulgated by the U. S. Department of Internal Revenue, such values may be used as the basis for depletion, provided (a) that

satisfactory evidence is furnished to the tax commission showing that there was no substantial difference between the value of the timber of January 1, 1911 and March 1, 1913; and (b) also provided that the March 1, 1913 values as entered have been approved by the Commissioner of Internal Revenue. Should there be any substantial difference between January 1, 1911 and March 1, 1913 values, the fair market value of the timber on January 1, 1911 must be used. For depletion purposes the cost of the timber shall not include any part of the cost of the land.

The unit value of the timber having been established in accordance with the foregoing instructions, shall be the basis for determining the depletion deduction for each year during the continuance of the ownership under which said values were fixed, and there shall be no revaluation for tax purposes.

The amount of the deduction for depletion in any taxable year shall be the product of (a) the number of units of timber cut during the year, multiplied by (b) the unit value of the timber.

When the sum of the credits for depletion equals the value or cost of the timber, no further deduction for depletion will be allowed.

Depletion of mines

Depletion of mines shall be based upon (a) cost if acquired since January 1, 1911 or (b) the fair market value on January 1, 1911 if acquired prior thereto.

Life insurance premiums

Life insurance premiums in no case can be deducted in income tax returns whether paid by the assured or by persons for whose benefit the policy was issued, as in the case of insurance policies issued on the lives of officers for the benefit of the corporation.

Royalties

Royalties paid the fee owner by a lessee are deductible, whether paid at the date of entering into the lease or in annual payments, or both.

Patents

Patents secured directly from the government should be depreciated one-seventeenth of the cost each year. In such cases the cost consists of the various government fees, cost of drawings, experimental models, attorneys' fees, and similar expenses actually paid. If a patent is purchased, depreciation should be based on cost and its remaining life. The fact that depreciation has not been taken in prior years does not entitle the taxpayer to deduct in any taxable year a greater amount for depreciation than would otherwise be allowable.

Reserves

Reserves for depreciation when transferred to surplus become taxable income. Such transfers indicate that amounts in excess of the needed requirements for depreciation had previously been deducted from income and had been voluntarily restored.

Reserves for bad debts, and reserves to take care of contingent losses or liabilities are not proper deductions.

To be deductible debts must have been ascertained to be worthless and charged off within the taxable year. An account merely written down or a debt recognized as worthless prior to the beginning of the taxable year is not deductible. Where all the surrounding and attendant circumstances indicate that a debt is worthless and that legal action to enforce payment would in all probability not result in collection, a showing of these facts will be sufficient evidence of the worthlessness of the debt.

Interest

This deduction is limited to interest paid during the year in the operation of the business from which its (taxable) income is derived. Interest paid on borrowed money to carry on operations without the state, the income from which would not be taxable, and interest paid in holding and maintaining unproductive property cannot be allowed as a deduction. To be a proper deduction the interest paid must be related to and a factor in producing the income taxed.

Unless the taxpayers report the form of the indebtedness, the amount paid, and the names and addresses of the parties

who received it, no deduction for interest can be allowed. In order to secure this deduction care should be taken to comply with this section in making income returns.

Losses

A stockholder cannot be permitted to deduct under the "guise" of losses depreciation in the value of his stock caused by the distribution of dividends. *Van Dyke vs. City of Milwaukee,* 159 Wis. 460.

Losses cannot be allowed if they result from the transaction of business or the ownership of property without the state.

The fact that a person purchased bonds at a premium does not entitle him to deduct annually from the interest received pro rata share of such premium in order that the capital may be kept unimpaired and that it may not be taxed as income. *Van Dyke vs. City of Milwaukee,* 159 Wis. 460.

Accounts and bills receivable charged off the books as worthless during the year may be allowed as deductions if previously reported as income.

The exact amount of the loss and the manner in which it occurred must be fully set forth in the return in order to secure the deduction.

Depreciation of stocks, bonds and securities cannot be allowed as a deduction under the head of "losses," nor is appreciation in such securities income until a bona fide sale is made and the loss or profit ascertained.

Taxes

Real estate, personal property, and occupational taxes paid or accrued on property or business producing taxable income are deductible.

Taxes deductible from gross income are such as are paid on income producing property located in this state, whether such taxes are greater or less than the amount of the income reported from such property, but taxes paid on property without the state or on property that produces no income or only a nominal income cannot be deducted. *State ex rel. Hickox vs. Widule,* 166 Wis. 113.

State income taxes, in excess of the personal property offset, and surtaxes, paid or accrued, are deductible. State income and surtaxes are deemed to accrue for income tax purposes in

the year in which the assessment is made by the tax commission. For example, said taxes on 1920 income were assessed in 1921 and may be accrued in 1921.

But federal income, excess profits, and capital stock taxes actually paid during the year may be deducted, and, therefore, cannot be accrued.

Federal excise taxes are deductible provided that in all cases where the amount of the tax is added to the selling price of the goods the full sales price, including the tax, must be reported as gross income.

Taxes paid by corporations cannot be allowed as deductions from the income of the stockholder. Special assessments cannot be considered as taxes because they are based on the theory that the property is benefited to the amount of the special assessment imposed

Double taxation of dividends

Double taxation of dividends is expressly guarded against by the provision which permits a deduction of such part of dividends as are paid out of earnings that have been taxed to the corporation paying the same. Thus, if corporation "A" is taxed on 50% of its income out of which it pays a dividend, only 50% of such dividend is taxable as income to the recipient.

To constitute an assessment within the meaning of the statute there must be an assessment or levy of a tax because of the existence of the fund as income. Passing upon the taxability of the surplus in the hands of a company by the tax commission did not constitute an assessment of such surplus. *State ex rel. Sallie F. Moon Company vs. Wisconsin Tax Commission,* 166 Wis. 287. *Van Dyke vs. City of Milwaukee,* 159 Wis. 460. *State ex rel. Columbia Construction Co. vs. Wisconsin Tax Commission,* 166 Wis. 369.

Only so much of the earnings of a corporation as are distributed to stockholders in proportion to their holdings can be considered as dividends. Profits distributed in proportion to patronage represent additional payment for material and are deductible as such by the company paying the same but should be reported as additional price of product sold by the patrons receiving the same.

Gifts and contributions

Contributions or gifts made within the taxable year are deductible to an aggregate amount not in excess of 10% of the taxpayer's net income as computed before deducting the amount of such gifts or contributions, if made to corporations or associations operating in Wisconsin and organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

There must not be included:

(1) Gifts and contributions to individuals;

(2) Gifts and contributions to business organizations, social clubs, baseball clubs, trade associations, pleasure organizations and similar organizations.

The purpose of the corporations or organizations should be inquired into in all cases to ascertain whether or not they are organized exclusively for the purposes set forth in the act and no part of the income of which inures to the benefit of any stockholder or individual. This means that all of the income of the recipient of the gifts must be devoted to religious, charitable, educational or scientific purposes or for the prevention of cruelty to children or animals.

In connection with claims for this deduction there should be stated on returns of income the name and address of each organization to which a gift was made together with the amount.

Exemptions

Burden of proof

The burden of proof rests on the person claiming exemption for a dependent to show that the person on account of whom he is claiming $200 additional exemption is not only "actually supported by" him but is also "entirely dependent upon" him.

Based on family unit

Exemptions are based on the family unit, graduated according to the number of members and the estimated cost of maintaining a family "on the lowest scale of decent subsistence." As such they were self-explanatory except as to the date when

the exemption shall attach in case of the marriage, birth or death of a member of the family during the year.

In furtherance of the policy of the law and in the absence of a statutory guide in this respect, the tax commission has ruled:

(1) That in case of the birth or death of a member of the family during the income year full exemption shall be allowed for the newborn or deceased member.

(2) That no exemption shall be allowed for minor children who attain the age of 18 during the income year, nor for children over 18 although supported by the parents unless incapable of supporting themselves from physical or mental infirmity.

(3) That all income received by minor children over 18 years of age shall be separately assessed to them and the full $800 exemption allowed.

(4) That in case of marriage or divorce during the year the full exemption for husband and wife shall be allowed to the husband when the wife has no separate income, but

(5) If both husband and wife have separate incomes the income of the wife prior to the date of marriage shall be separately assessed to her, subject to such part of the $800 exemption prescribed for individuals as the part of the year prior to marriage bears to the entire year.

(6) That the income of the husband for the entire year plus the income received by the wife subsequent to marriage shall be assessed to him subject to such part of the $800 exemption prescribed for individuals as that part of the year prior to date of marriage bears to the total year, plus such a part of the exemption prescribed for husband and wife as that part of the year subsequent to marriage bears to the entire year.

Bank dividends

In the case of *National Bank vs. Owensboro,* 173 U. S. 664, it was held that national banks can only be taxed in the manner authorized by Congress; that is, by assessment of the stock as property to the individual shareholders. As state banks are in direct competition with national banks and own property of the

same character, consistency requires that they be taxed in the same manner. Moreover if the income of banks were assessed, the tax thereon would be subject to offset by the stock tax section under 71.21 of the statutes. For these reasons the legislature excludes banks from the operation of the income tax law altogether.

Educational corporations

Where an educational corporation, organized to conduct a private enterprise on the plan of a profit sharing corporation with capital stock owned by shareholders, receives from its business an annual income in excess of its expenses and applies the excess to improving its properties, thus enhancing the value of the holdings to the stockholders, its income is not exempt from taxation under section 71.21 of the statutes. *St. John's Military Academy vs. Larson,* 168 Wis. 357.

Public service companies

Section 71.05 (3) exempts from the payment of income tax:

Railroad companies

Palace and sleeping car companies

Freight line and equipment companies

Express companies

Street railway companies including connected electric light, heat and power companies.

Telegraph companies

Fire insurance companies

Life insurance companies

Accident, surety, etc., companies

Telephone companies

Title guaranty companies

Conservation and regulation companies.

Dividends paid by the classes of corporations above mentioned are taxable to stockholders who are residents of this state without deduction, as no part of the income of such corporations can be taxed.

Telephone and insurance companies are taxed upon their gross earnings under the license system.

In the assessment of state-wide public service companies the franchise element is required to be included, and the earnings or income are taken into account in determining their value. For that reason they have been exempted from the income tax. This exemption does not extend to local utilities, such as water, light, heat and power companies except when owned and operated in connection with street railways.

RATES

The following tables may be used in computing income taxes:

Corporations

Taxable income	Rate per cent	Tax	Total income taxed	Total tax	True rate on whole amount in even thousands
1st $1,000	2	$20.00	$1,000	$20.00	2%
2nd $1,000	2½	25.00	2,000	45.00	2.25
3rd $1,000	3	30.00	3,000	75.00	2.5
4th $1,000	3½	35.00	4,000	110.00	2.75
5th $1,000	4	40.00	5,000	150.00	3.
6th $1,000	5	50.00	6,000	200.00	3.3333
7th $1,000	6	60.00	7,000	260.00	3.7143
8th $1,000	6	60.00	8,000	320.00	4.
9th $1,000	6	60.00	9,000	380.00	4.2222
10th $1,000	6	60.00	10,000	440.00	4.4
15th $1,000	6	60.00	15,000	740.00	4.9333
20th $1,000	6	60.00	20,000	1,040.00	5.2

Individuals

	Taxable income	Rate per cent	Tax	Total income taxed	Total tax	True rate on whole amount
1st	$1,000	1	$10.00	$1,000	$10.00	1%
2nd	1,000	1¼	12.50	2,000	22.50	1.125
3rd	1,000	1½	15.00	3,000	37.50	1.25
4th	1,000	1¾	17.50	4,000	55.00	1.375
5th	1,000	2	20.00	5,000	75.00	1.5
6th	1,000	2½	25.00	6,000	100.00	1.6667
7th	1,000	3	30.00	7,000	130.00	1.8571
8th	1,000	3½	35.00	8,000	165.00	2.0625
9th	1,000	4	40.00	9,000	205.00	2.2778
10th	1,000	4½	45.00	10,000	250.00	2.5
11th	1,000	5	50.00	11,000	300.00	2.7273
12th	1,000	5½	55.00	12,000	355.00	2.9582
13th	1,000	6	60.00	13,000	415.00	3.1923
15th	1,000	6	60.00	15,000	535.00	3.5667
20th	1,000	6	60.00	20,000	835.00	4.175

Assessment districts

The tax commission has made the following division of the state into forty districts:

No. of district	
1.	Kenosha
2.	Racine
3.	Walworth
4.	Rock
5.	Green, Lafayette
6.	Grant, Iowa
7.	Dane
8.	Jefferson
9.	Waukesha
10.	Milwaukee
11.	Ozaukee, Washington
12.	Dodge
13.	Columbia, Marquette
14.	Sauk
15.	Crawford, Richland
16.	LaCrosse
17.	Adams, Juneau
19.	Winnebago, Waushara
20.	Fond du Lac, Green Lake
21.	Sheboygan
22.	Calumet, Manitowoc
23.	Door, Kewaunee
24.	Brown, Oconto
25.	Outagamie, Waupaca
26.	Portage, Wood
27.	Clark, Jackson
28.	Buffalo, Pepin, Trempealeau
29.	Pierce, St. Croix
30.	Chippewa, Barron
31.	Marathon
32.	Shawano, Langlade
33.	Florence, Forest, Marinette
34.	Oneida, Vilas, Lincoln
35.	Price, Taylor
36.	Rusk, Sawyer
37.	Burnett, Polk
38.	Douglas, Washburn
39.	Ashland, Bayfield, Iron
40.	Dunn, Eau Claire
41.	Monroe, Vernon

The office of assessor of incomes is not a county, city, town or village office, and appointments thereto may be made by state authority without conflict with the home rule clause of the constitution, *Income Tax Cases,* 148 Wis. 456. Subject to civil service requirements, all citizens and electors of the state are eligible to the office of assessor of incomes, but preference is required to be given to residents of the district to be served. All assessors of incomes heretofore appointed have been residents of their respective districts.

Counties are required to provide assessors of incomes with suitable rooms at the county seat for the use of the assessor, *together with furniture, fixtures, and other equipment necessary to properly conduct the duties* of his office. The term "suitable rooms" means rooms appropriate and adequate to the business of the office and includes light and heat. Without light and heat such rooms would be wholly unsuitable.

The county is also required to furnish assessors of incomes with all furniture, fixtures, and other equipment which the duties of his office make necessary. Under this head is included all ordinary office furniture and all permanent office equipment, such as typewriter, adding machines, filing cases, index cards, and practically all that an assessor requires except postage stamps and supplies of daily consumption. If any county fails to comply with these requirements the tax commission is authorized to procure whatever is necessary, the cost of which becomes a special charge against the county and is collected by state tax levy.

Powers of assessors of incomes

Among the powers of assessors of incomes are those set forth in section 1056 of the Revised Statutes authorizing the assessors to examine persons under oath and to require them to make sworn statements. The "power to estimate incomes" is the so-called "doomage power."

A doomage assessment does not exempt the tax payer doomed from the penalties provided by law for failure to make a return.

Persons required to make return of income

All unmarried persons who have a gross annual income of over $800 and all married persons who have a gross annual income of over $1,200 should make a return on or before March first of each year whether notified by the assessor of incomes to do so or not. All corporations are required to make returns to the tax commission on or before February 15th of each year.

Income of fiduciaries

Dividends derived from stocks and interest derived from notes, mortgages, etc., received by a resident trustee (individual or corporate) as a gain or profit from securities constituting the trust fund are taxable as income in this state even though the person entitled to the enjoyment thereof and to whom they must be paid over is a nonresident and also a cotrustee, and even though two of the trustees reside without the state. The resident trustee, in such a case, in whose custody the securities are, and to whom the dividends and interest are paid, must be deemed the recipient of such income. *State ex rel. Hickox vs. Widule,* 166 Wis. 113. *State ex rel. Wisconsin Trust Co. vs. Widule,* 156 Wis. 121.

Where the property of a corporation consisting of mines and lands in Michigan was transferred to trustees, residents of Wisconsin, each beneficiary under the trust being a stockholder of the corporation and having the same interest under the trust agreement as he had in the corporation, and the rents received by the trustee being paid to the beneficiaries, the money so received is not taxable income because income received from sources outside the state is not taxable. *State ex rel. Mariner vs. Hampel, county clerk,* 172 Wis. 67.

Assessment of fiduciaries

In answer to numerous inquiries the tax commission has issued the following instructions to assessors of incomes relating to the assessment of executors, etc.

(1) Executors, administrators, guardians and trustees are required to make return of all income received by them in their representative capacity for each calendar year during the existence of the trust. The return for the year of their appointment should also include the income received by the deceased or incompetent person whom they represent or succeed from the first of January preceding to the date of appointment. Under the foregoing amendment the return for the year in which the trust is terminated should cover the income from the first of January preceding to the date of final settlement. All such returns should be made on the regular blanks prescribed for executors, administrators, trustees and others acting in a fiduciary capacity. In case any such representative or the person whom he represents or succeeds shall have failed or omitted to make a return of the income received by him for either of the next three preceding years, he should make separate return of such income.

(2) The exemptions prescribed for individuals are based upon the family unit. In the ordinary course of probate of an estate the executor or administrator stands in the place of the former owner and the unity of the family is generally preserved. During this period, therefore, exemption should be measured by the family status. It follows that executors and administrators should be allowed the same exemptions for the year in which the deceased died which he might have claimed if he had survived. In subsequent years no exemption should be al-

lowed for the deceased, but full exemption should be allowed for the succeeding head of the family and minors and dependent members thereof.

(3) As a general rule the tenure of guardians and trustees is more permanent and the family relation among the beneficiaries less frequent. In such cases when the return covers a full calendar year the statute seems to contemplate that exemptions should be allowed according to the status of the beneficiary as if he reported in his individual capacity. As the return for the year in which the trust is terminated covers only the income received from the first of January preceding to the date of final settlement, and the beneficiary must make return for the balance of the year, care should be exercised to avoid double exemption. In that event at the option of the beneficiary the fiduciary may claim exemption for him or the beneficiary may waive the exemption in the return made by the fiduciary and avail himself of it in his individual return. When the fiduciary claims exemption for the beneficiary and such exemption exceeds his share of the income reported, the unused portion of the exemption may be claimed by the beneficiary in making his individual return.

(4) Every assessor of incomes should require returns of all fiduciaries appointed by or acting under the jurisdiction of any court in his district, who may be liable for an income tax, preliminary to final settlement of their estates. He should assess the income as soon as the returns are received and certify the amount of tax due thereon to the court having jurisdiction of the trust and mail a duplicate copy of such certificate to the county treasurer and enter the same on the income tax assessment roll in the manner prescribed by section 71.09 (7).

Should the court make an order dispensing with the return under the authority of subsection 8 of section 71.09, and after the final settlement and distribution of the estate it shall be ascertained that taxable income had been received, the fiduciary is personally responsible for the tax. The court is not made a substitute for, but an aid to, the assessor of incomes. Any order dispensing with the return will be made at the risk of the fiduciary, and hence in all cases it is greatly to his interest to see to it that no such order is inadvertently made.

The certificate required by section 71.09 (7) may be substantially in the following form:

CERTIFICATE

County Court.....County, Wisconsin
In the matter of the.....}
....., Deceased.}

I the undersigned, assessor of incomes in and for.....
.....County, Wisconsin, hereby certify that.....
as.....of the estate
of....., deceased, has made due return of all income received by him in his representative capacity as required by Section 71.09 (7) of the Statutes (chapter 265, Laws of 1917 and chapter 386, Laws of 1919); that I have carefully examined said return and find the amount of income taxes due from him as.....
of said estate to be as follows:

$.....on income received by him for current year,
$.....on income received by him in 19
$.....on income received by him in 19
$.....on income received by him in 19

That said estate is being administered in the County Court of.....County, and the tax thereon is payable to the treasurer of said county, to be distributed by him in the following manner:

70% or $.....to be paid to the Treasurer of.....
20% or $.....to be retained by him for the County of.....
10% or $.....to be paid to Treasurer of State of Wisconsin. (or)

That I have carefully examined the accounts of.....
as.....of the said estate and that there is no income tax due from him in his representative capacity.

Dated this.....day of....., 19.....

.....
Assessor of Incomes,
.....County, Wisconsin.

Penalties

In addition to the power to reassess income omitted in any of the three previous years, the tax commission or assessor of incomes is authorized, if not required, to tax such income at double the original rate. In the case of failure to make a return in any year the tax commission or assessor of incomes may "estimate" the income and impose the double tax rate upon the income thus fixed.

Assessment of income not previously assessed

Income of this character which escaped taxation more than three years prior to the year of assessment cannot be reached, but it does not follow that the taxes due thereon cannot be enforced at all. On the contrary, it is well settled by decisions of the United States supreme court and of several states that such taxes can be collected by direct action against the taxpayer after the right to reassess has expired.

Dollar Savings Bank vs. United States, 86 U. S. 227;
Meredith vs. United States, 13 Peters 486;
United States vs. Chamberlain, 219 U. S. 250.

The same rule has been applied in several of the states, notably in California, Massachusetts, New York, and Connecticut, and is probably the general law.

Appeals by corporations

The "hearing and appeal" referred to in 71.12 is in the nature of a review or rehearing before the tax commission as to the amount of income on which the corporation should be taxed. The section does not refer to proceedings in court nor does it authorize an action against the state to recover taxes unlawfully levied as in the case of steam railroads. Relief from the levy or collection of an unlawful income tax must be sought under subdivision 4 of section 71.18 and sections 74.73 and 75.60 of the statutes. See *Montreal Mining Co. vs. State,* 155 Wis. 245.

Income tax boards of review

The tax commission is required to appoint three resident taxpayers of each county to serve as an income tax board of review.

The first meeting of such board is held on the last Monday in July in each year.

The law does not specify by whom the notice of the meeting of the board of review shall be signed. In the absence of such direction the tax commission has ruled that it shall be signed by the assessor of incomes. The following form of notice is recommended for the purpose:

Notice is hereby given that the income tax board of review in and for.....County will meet at the courthouse in the city of....., on the.....day of July, 19....., at 10 o'clock in the forenoon, for the purpose of examining the income tax assessment roll and of considering complaints of aggrieved taxpayers and performing such other duties as are imposed upon it by law.

Dated at.....this.....day of July, 19.....

.....

Assessor of Incomes in and for

.....County.

Powers and duties of boards of review

The powers and duties of income tax boards of review are substantially the same as those prescribed by section 70.47 of the statutes relating to the property tax. Their principal duty is to pass upon disputed facts and not to modify or suspend any provision of the income tax law or the regulations prescribed for the administration thereof. While the reason for such laws and regulations may not be apparent in all cases, they were framed with reference to their effect on the administration of the law as a whole and are generally observed in making assessments. The failure of individual boards of review to be governed by them will inevitably destroy the uniformity between taxpayers which it is the policy of the law to maintain.

An income tax assessor if dissatisfied with the decision of the board of review of income tax assessments, has the right to appeal therefrom to the state tax commission. *State ex rel. Wickham vs. Nygaard,* 159 Wis. 396.

The remedy of appeal to the state tax commission by a person dissatisfied with any determination of the county board of review

in respect to the assessment of his income is not exclusive. Nor is such an appeal a condition precedent to the right to maintain an action for the recovery of illegal income taxes paid under protest. Such action may be maintained under subdivision (4), section 71.19 and section 1164. *Horlick vs. Town of Mt. Pleasant,* 161 Wis. 366. *Field vs. Milwaukee* 161 Wis. 393.

Upon certiorari the presumption is that the decision of the income tax board of review is correct, and if upon any reasonable view of the evidence it will support such decision, it cannot be disturbed. *State ex rel. Howe vs. Lee,* 172 Wis. 381.

Recovery of illegal taxes

By the voluntary payment of an illegal tax all right to bring action to recover it under section 1164 is lost. The right of recovery can only be preserved by paying the tax under protest. *State ex rel. Marshall and Ilsley Bank vs. County Clerk,* 155 Wis. 499. Proceedings to recover an illegal tax must be commenced within one year after payment of the tax.

A taxpayer who fails to make objection to the assessment of his income before the income tax board of review thereby waives his right to question such an assessment in any action or proceeding. *State ex rel. Bues vs. Phelps,* 182 N. W. Rep. 749.

Apportionment of taxes

Much confusion has arisen from the failure of taxpayers to furnish the necessary data for apportioning income taxes under section 71.18 (2) and (3). Where a taxpayer receives income from different assessment districts within the state, the method of apportionment is substantially the same as where income is derived from within and without the state. Persons doing business in different assessment districts within the state should carefully report (1) the total amount of tangible property employed in carrying on the business and the amount located in each assessment district; (2) the total amount of business transacted during the year in all districts and the amount in each particular district, preferably expressed in gross receipts; (3) factory cost of goods manufactured in all districts and in each separate district. It should be borne in mind that it is the town, city, or village in

which the property is located or business transacted which is entitled to the tax, and the name of such municipality should be carefully given in addition to the post-office address.

When income taxes have been certified to and collected by a taxing district and afterward a part of such taxes have been allocated by the tax commission to another district and the claim of such district has been approved by the tax commission and properly presented within one year to the district collecting the tax, the town presenting such claim, if its demand is refused, may recover the amount thereof by section 71.18 (6) of the statutes. *Town of Mineral Point vs. City of Mineral Point,* 173 Wis. 355.

Personal property tax laws applicable to income tax

Section 71.18 (4) makes the statutory provisions relating to the manner of assessing, collecting and paying personal property taxes applicable to the income tax where no express provision to the contrary is made. It also permits the correction of errors in assessment and tax rolls by town, city, and village clerks and treasurers in the manner and to the extent prescribed by sections 70.52, 70.73 (1) and 70.73 (2) of the statutes.

While approval of a claim for illegal taxes by the assessor of incomes or the tax commission is not a condition precedent to an action in court to recover such taxes, it is a condition precedent to voluntary payment or refund by town, village and county boards and common councils. *Field vs. Milwaukee,* 161 Wis. 393.

Secrecy of returns

The law prohibits the tax commission, assessors of incomes, and all employes from divulging any information contained in income tax returns, provided, however, certain information contained in them may be divulged under rules and regulations to be prescribed by the tax commission. In pursuance of this authority the following rules and regulations have been prescribed by the tax commission, permitting the use of returns for the purposes mentioned in the law:

(1) The information contained in income tax returns which may be divulged is limited to such as relates to the "ownership

and value of property," and may be furnished only to "public officials" charged with the duties of assessing the same for taxation.

The term "public officials" includes local assessors of property, income assessors, public administrators and boards of review.

(2) Any such public official is prohibited from divulging any information received by him except so far as "may be necessary for the performance of his duties."

(3) As income tax returns contain much information not relating to the ownership and value of property which cannot lawfully be disclosed, they should not be submitted to the inspection of assessing officials, and the disclosure authorized by the foregoing section must be confined strictly to information of the character specified therein.

(4) All the information contained in income tax returns relating to the ownership and value of property may be made available to "public officials charged with the duties of assessing the same for taxation" when called for during the assessing period and until the final adjournment of the board of review, and may be given orally or certified in writing as may be found most convenient or as may best serve the purpose of the public officials entitled thereto.

(5) Disclosure should not be made at any time except when assessing officers are engaged in the performance of their duties and for no other purpose than to enable them to properly perform such duties.

(6) There should be furnished to the representatives of the state or municipality charged with the duty of prosecuting or defending any action or proceeding defined in the act a certified copy of the income tax return upon which the tax affected by such action or proceeding was based, and upon the hearing or trial thereof said return and all statements and correspondence relating thereto should be produced in evidence, if called for by the court or body before whom such action or proceeding is pending, or by the representatives of the state or municipality prosecuting or defending the same.

(7) Should an assessor of incomes be in doubt as to his duty to furnish the information called for in any case he should apply to the tax commission for further instructions.

Under the authority of Sec. 71.20 (4) the commission has entered the following order which is now in force.

To County Clerks

Under the authority conferred upon the tax commission by subdivision 4 of section 71.20 the tax commission hereby orders and directs that all income assessment rolls filed by this commission in your office and all income assessment rolls completed by the assessor and board of review and filed in your office, and all income tax rolls in your office or filed in the office of the county treasurer be treated as public records open to the inspection of persons having occasion to consult the same to the same extent and in the same manner and under the same restrictions as other public records in your custody.

This rule is to be considered permanent until revoked or amended by the tax commission.

The federal and state governments have power to provide that returns made to their officers to be used in assessing and collecting revenue and taxes shall not be revealed by the officers, and such provisions protect the officers against commitment for contempt for refusal to produce such returns on subpoena of a court. *Myrland vs. Warner,* 240 Fed. Rep. 310.

Rule Authorizing Parties to Litigation Relating to Income Taxes to Inspect and Produce in Evidence the Original Return, Correspondence and Proceedings Before the Board of Review Relating Thereto, Adopted February 3, 1919.

Under and by virtue of the authority conferred upon it by section 71.22 of the statutes the Wisconsin Tax Commission on the 3rd day of February, 1919, adopted the following rule, supplementary to section 71.21 of the statutes relating to the secrecy of income tax returns and Circular No. 390, published in connection therewith on page 45 of the 1917 pamphlet of the Wisconsin Income Tax law with Explanatory Notes.

The Wisconsin Tax Commission hereby orders and directs that:

"In any action or proceeding heretofore or hereafter brought to collect, enforce, cancel, set aside or modify an income tax or the assessment on which the same is based, the original return of the taxpayer and all records, files and correspondence pertaining to the assessment of his income, including the proceedings had and evidence taken before the income tax board of review relating to such assessment and the tax based thereon, shall be open to the inspection of all parties to such litigation and their representatives or attorneys and may be offered and produced in evidence at the trial of such action or hearing on said proceedings insofar as the same are relevant and material."

Income tax paid with personal property receipt

When an income tax and a personal property tax is assessed against the same person in the same year, the personal property tax may be used in payment of the income tax. *City of Milwaukee vs. Patton,* 158 Wis. 617.

When omitted income of former years is assessed, the personal property tax levied in the year in which the omitted income was earned cannot be used in payment of the income tax, because the assessment of the income and personal property was not made in the same year. *Eisenlohr vs. Dickinson,* 166 Wis. 501.

When the income tax and the personal property tax are both assessed in the same district and the taxpayer is not assessed for income tax in any other district, the taxpayer will simply pay the

larger tax and obtain two receipts, one for personal property and one for income tax.

If the taxpayer wishes to use a personal tax receipt issued in one district to offset income tax assessed in another district, the following procedure should be observed:

1. Secure a separate personal property tax receipt and have the treasurer endorse on it the amount used to offset income tax in that district.

2. Present or mail this personal tax receipt to the Assessor of Incomes of the county in which it was issued and apply for Special Offset Receipts covering the balance of personal property tax. In Milwaukee city apply first to Income Tax Teller, City Treasurer's Office.

3.This application should state the amount desired for offset in each other district in which the taxpayer has income tax to pay, giving the correct name of such district and the county in which situated.

4. Offset receipts for balance of personal property tax will be issued with coupons, which coupons will be accepted only for the amount entered upon them and in the district for which they are issued.

5. The taxpayer should pay his personal property taxes in time to secure special coupon receipts from the Assessor of Incomes and forward them to the local treasurer against whom they are issued. Penalties are imposed if the taxes are not paid on or before January 31.

6. Ordinary personal property tax receipts will not be received in offset in districts other than that in which issued.

7. The exact name is important. For instance, a firm cannot use its personal property tax receipt to offset the income tax of its members.

8. It is a common practice to write a personal property tax receipt at the bottom of the real estate receipt. Taxpayers should therefore request a separate personal tax receipt whenever they wish to use the latter to secure the special offset receipts mentioned above.

Section 70.08 of the Statutes requires buildings on leased land to be assessed as real estate, and taxes paid thereon cannot be used in payment of income taxes.

SURTAXES, HOW COMPUTED

Individuals

The soldiers' bonus surtax, in case of individuals, is found by deducting from the normal income tax $37.50, representing the amount of the normal tax on the first $3,000 of income which is not subject to tax. The surtax on an income in excess of $3,000 is computed at the same rates as the normal tax.

The soldiers' educational surtax is found by deducting from the normal income tax as computed on taxable income the sum of thirty-seven and 50/100 dollars ($37.50) and dividing the remainder by five (5). The quotient is the surtax.

The teachers' retirement fund surtax is computed as the soldiers' educational surtax is computed, except that the divisor to be used is six (6) instead of five (5).

Corporations

The soldiers' bonus surtax is found by deducting from taxable income six per cent of capital, surplus, and undivided profits and computing the tax on the remainder at corporation income tax rates.

The soldiers' educational surtax is one-fifth of the soldiers' bonus surtax.

The teachers' retirement fund surtax is found by deducting seventy-five dollars $75.00), the corporation tax on the first $3,000 of taxable income, from the normal income tax and dividing the remainder by six. The quotient is the surtax.

The question how the teachers' retirement fund surtax should be computed was raised soon after the law was enacted and was submitted to the Attorney General's office. A construction was placed on the law by that department which has been followed by the tax commission.

The opinion given is as follows:

June 24, 1921.

Dear Sir:

You have asked my opinion as to the meaning of certain surtax provisions of the Teachers' Retirement Fund Bill No. 234, S, which has now passed both houses and is about to be presented to the Governor.

The bill creates a new sec. 20.251 Stats. Subsec. 1 provides that in addition to the income tax imposed by the income tax law, there shall be levied on the incomes of all individuals, co-partnerships and fiduciaries, a "surtax on net incomes computed at one-sixth the rates prescribed in subsec. 1 of sec. 1087m-6." The second subsection of 20.251 makes a similar provision as to the income of corporations, referring to the rates named in subsec. 2 of sec. 1087m-6 as the basic rates. The third subsection of the new law provides that the surtax "shall be upon the net income in excess of $3000." The fourth subsection provides that "net income" shall be computed in the same manner as the income taxable under the income tax law.

The question on which you ask an opinion is whether in determining the rate applicable to the first thousand dollars of income subject to surtax, you should take one-sixth of the rate applicable to the *same income* under the income tax law or one-sixth of the rate applicable to the *first $1000 of taxable income* under that law.

Under the definition contained in subsec. 4, net income within the meaning of the new law will be exactly the same as taxable income under the income tax law. The latter law provides as to individuals a rate of 1% on the first $1000 of taxable income, 1¼% on the next $1000, 1½% on the third $1000 and 1¾% on the fourth $1000. The corresponding rates for corporations are 2%, 2½%, 3% and 3½%, respectively. The new law provides that there shall be a surtax on the "net income," meaning the taxable income, and it further provides that the first $3000 of that taxable income shall not be "surtaxable," if I may use the term. It then provides that when the point is reached at which the income becomes "surtaxable," the surtax shall equal one-sixth the rates prescribed in the income tax law itself.

To my mind, this very clearly means that the rate payable by a given thousand dollars of income after it reaches the point of being "surtaxable," shall be one-sixth of the rate that that same thousand dollars is concurrently paying as regular income tax. The new law does not provide for an extra $3000 to be taken off the gross income before arriving at the net income; on the contrary subsec. 4 expressly provides that the net income for the purposes of the new law shall be ascertained in the same manner as the taxable income is ascertained under the income tax law. Hence, the *net income,* within the meaning of the new law, begins to exist as soon as the *taxable income* begins to exist under the income law: i. e., as soon as there is a margin over the ordinary exemptions and deductions. As soon as this taxable income or net income begins to exist, it is subject to an income tax, but it does not become subject to a surtax until another $3000 has been added to it. When this $3000 has been added, it becomes *"surtaxable"* at one-sixth of the rate at which it is *taxable.* That rate, in the case of individuals, is 1¾%, and in the case of corporations

3½%. It appears to me that the only meaning logically to be read out of the language of the new law is that the surtax rate applicable to the first $1000 of "surtaxable" income is one-sixth of 1¾% in the case of individuals, and one-sixth of 3½% in the case of corporations.

ANNUAL DEPRECIATION IN PERCENTAGES.

	Frame, per cent	Brick and masonry, per cent
Sheds	7	....
Farm dwellings	2.5	2
Other farm buildings	2.5	2
City dwellings	2.5	2
Apartment houses	3	2.5
Stores	2.5	2
Stores with flats above	2.5	2
Warehouses	2.5	2
Elevators	2.5	2
Factories	5	3
Office buildings	2.5	2
Hotels	2.5	2
Paper and pulp mills	5	2.5

Machinery:

Machine tools:

Lathes, slotters, planers, drilling and boring machines, milling machines, tool and surface grinders, emery wheels, key-way cutters, tapping machines, arbor presses, centering machines, squaring machines, hack saws, notching machines, buffing machines, test pumps, pointing machines, metal band saws, belt lacers, saw grinders, die sinking machines, trimming presses, belt cutters, pipe threading machines, saw setting and filing machines, angle benching machines, from 5 to 7 per cent.

Punches, shears, hydraulic and pneumatic riveters, bending rolls, straightening rolls, straightening presses, joggling machines, flanging machines, frame setting machines, beveling machines, forging and upsetting machines, from 5 to 7 per cent.

Hydraulic forging presses, bending presses, fluid compressors, 5 to 7 per cent.

Hammers, steam, drop, or helve, 10 per cent.

Shafting, pulleys, hangers, 5 per cent.

Wood working machinery, including band, jib and rip saws, dove tailing machines, moulding machines, tenoners, mortisers, sizers, wood boring machines, wood shapers, wood lathes, wood

planers, universal wood workers, carvers and moulders, sanding machines, surfacers, swing saws, scroll saws, jointers and wood cut off saws, disc grinders, 5 per cent to 7 per cent.

Miscellaneous machinery:

Locomotive cranes, steam and electric, and steam shovels, 10 per cent.

Grinding and mixing machines, crushers, pulverizers, squeezers, scrap shears, concrete mixers, tumbling barrels, sand blast machinery, roller feeders, testing machines, vibrating machines, tie rod machines, welding machines, oil meters, fans, gauges, blowers, shaving exhaust system, oil testing machines, sand dryers, oiling systems, sewing machines, locking machines, crimping machines, ball mills, roller feeders, mechanical mixing machines, 10 per cent.

Printing and binding machines, 7½ per cent. Type, 25 per cent.

Stands, chases, stones, 10 per cent.

Canning machinery, 10 per cent.

Miscellaneous equipment:

Anvils, forges, bending blocks, surface plates, mandrels, porter bars, track and wagon scales, crane scales, portable scales, oil filters, glue pots, microscopes, 10 per cent.

Power house equipment:

Boilers, 5 to 7½ per cent. Steam piping, 5 per cent. Steam engines, 5 per cent. Steam turbines, 4 to 5 per cent. Belted generators, 5 to 7½ per cent. Wires and cables, 5 per cent. Switch boards, 5 per cent. Motors, 5 per cent.

Paper mills. Composite rates.

Paper mill with neither sulphite nor pulp mill, 5½ per cent.

Paper mill with sulphite mill, 6 per cent.

Paper mill with sulphite and pulp mill, 6 per cent.

Miscellaneous:

Dies, 15 to 20 per cent. Patterns, 10 to 25 per cent. Small tools, 15 to 25 per cent. Drawings, 15 to 30 per cent. Office fur-

niture and fixtures, 10 per cent. Horses, 16 per cent. Harness, 20 per cent. Wagons, 16 per cent. Sleighs, 10 per cent. Automobiles and trucks, 20 to 25 per cent.

Other property:

Depreciation of other property not listed above should be computed upon the cost value and based on the probable life of the asset in years.

RECEIPTS TAXABLE AS INCOME AND EXPENDITURES NOT ALLOWABLE AS DEDUCTIONS

In the administration of the income tax law numerous questions have arisen as to whether a given receipt should be treated as income or a particular expenditure allowed as a deduction. Without attempting to cover the entire ground, we enumerate below the most common of these items, specifying in two separate groups certain receipts which should be treated as income and certain expenditures which are not allowable as deductions. It should be borne in mind that these lists do not purport to be exhaustive, but are confined to such items as have occasioned most controversy.

Receipts taxable as income

1. All compensation for personal or professional services, whether in the form of wages, salaries, fees or commissions.

2. Salaries and wages of all state and local officers, including judges.

3. All salaries, stipends and gifts received by clergymen in their own right in the performance of their pastoral duties.

4. The reasonable value of accommodations furnished to officers and employes as part of their salary, such as board and lodging to hotel managers, and use of residences furnished to pastors, teachers, and public employes.

5. All rent of Wisconsin real estate, including royalties received for extracting ore.

6. All interest on bonds and mortgages whether executed by parties or secured by property within or without the state.

7. All dividends declared out of profits, either in stock or cash, accumulated since January 1, 1911, which have not been taxed to the corporation distributing the same.

8. All profits derived from property located or business transacted within the state.

9. All profits from the sale of Wisconsin real estate or other capital assets acquired since the first day of January, 1911.

10. The reasonable value of farm products consumed by the owner and all supplies from a merchant's stock used by his family.

11. Income from inheritances, bequests, and trust estates.

12. Dividends from state and national banks not taxed under Wisconsin laws.

13. Endowment or other life insurance paid to the insured in his lifetime in excess of the premiums paid therefor.

Expenditures not allowable as deductions

1. Alimony to divorced wife.

2. Depreciation
   (a) of land;
   (b) property not producing taxable income, or
   (c) good will.

3. Depletion of mines claimed by lessee.

4. Election expenses.

5. Administrators', executors', and attorneys' fees in probating estates.

6. Interest paid in the operation of a business or the maintenance of property not producing taxable income.

7. Losses sustained in the transaction of business or from the ownership of property, the income of which would not be taxable.

8. Uncollectible rent and interest not previously reported as income.

9. Premiums paid by corporations and partnerships for insurance on the lives of corporate officers or members.

10. Losses from estimated obsolescence.

11. Expenses incurred in the organization of a corporation.

12. Special assessments for street, sewer, and sidewalk improvements.

13. Accrued federal taxes.

14. Inheritance taxes.

15. Taxes on property from which no taxable income was derived.

16. Wages of household servants, chauffeurs or nurses.

17. Shrinkage or depreciation in the market value of stocks, bonds or other securities until sold or otherwise finally disposed of.

18. Reserve for bad debts.

19. Reserves for contingent losses and liabilities.

20. Flat percentage deduction of inventories.

PREPAYMENT OF INCOME TAXES

To assessors of incomes

Herewith find copy of chapter 311, Laws of 1921, authorizing the pre-payment or advance payment of income taxes. Hereafter all income taxes that are tendered you before they become due should be accepted and turned over by you to the county treasurer of the county authorized to receive them under this act, accompanied by your certificate stating the name of the taxpayer, the amount of the tax and the district or districts entitled thereto.

We also enclose copy of chapter 335, Laws of 1921, limiting the deduction in income tax returns of gifts or contributions to such religious, charitable, scientific or educational organizations as operate within this state, and reducing the amount that may be deducted from 15 per cent to 10 per cent of the net income reported. This chapter, however, is held not to apply to income of 1920.

APPEALS

To assessors of incomes

In any case where the income tax board of review reverses an income tax assessment made by you, either in whole or in part, you are advised to appeal from its determination to the tax commission under section 71.15 of the statutes if an important principle is involved.

By referring to section 71.13 (2), you will observe that a stenographic reporter may be employed to take evidence in cases before the board of review, and that the compensation of the re-

porter "must be paid by the county treasurer on the certificate of the assessor of incomes."

We advise the employment of a stenographic reporter under the authority of this statute to take all evidence submitted to the board of review in contested cases in order that the commission may have all the facts before it when called upon to review a determination of the board.

Where an appeal is taken either by you or the complaining taxpayer, you should see to it that the record and all the testimony taken in the case is promptly forwarded to the commission.

The following form of notice of appeal may be used, and should be served on the county clerk and the taxpayer within twenty days after the determination of the board of review:

.....County, Wisconsin.

In the matter of the.....income tax assessment of....., made by the income tax board of review of said county.

NOTICE OF APPEAL

To....., county clerk of..... county and.....

You will please take notice that the undersigned,..... ....., assessor of incomes for..... .....county, being dissatisfied with the determination of the income tax board of review in assessing the income of.....for the year....., hereby appeals therefrom to the Wisconsin tax commission under and pursuant to section 71.15 of the statutes.

Dated at....., Wisconsin, this..... day of..... ....

Assessor of Incomes.

If the taxpayer desires to appeal, he may use substantially the same form, and should serve notice on the assessor of incomes and county clerk.

NOTICE TO TAXPAYERS

To assessors of incomes

When assessment of income is made by you in excess of the amount returned, you are instructed to give the taxpayer notice of the increase, stating the amount thereof, his right to contest the same before the county board of review, the date of the meeting of said board, and his right to appeal to the tax commission within twenty days after its decision is made.

We have no doubt this practice is generally followed by assessors of incomes, but there have been embarrassing exceptions, and this circular is issued by the commission for the purpose of emphasizing the importance of strictly following the above rule.

DEPRECIATION

To assessors of incomes

The general principles to be observed in calculating the depreciation factor in profit on real estate sales are as follows:

(1) To the *profit* calculated irrespective of the factor of depreciation, there should be *added* DEPRECIATION ON THE BUILDINGS FOR THE PERIOD THEY HAVE BEEN OWNED BY THE PRESENT OWNER during the operation of the income tax law.

(2) The *period* for which depreciation should be calculated is

(a) In the case of purchase since 1911, from date of purchase to date of contract of sale.

(b) In case of acquisition by inheritance or gift, since 1911, the period from date of acquisition to date of sale.

(c) If held Jan. 1, 1911, the period from Jan. 1, 1911, to date of sale.

(3) The *base* upon which depreciation should be calculated should be the original cost of the buildings to the *present* owner, or if owned by him on January 1, 1911, their fair market value at that date, or, if acquired by gift or inheritance, since 1911, the fair market value when acquired.

(4) The *rates* of depreciation to be applied are those set forth on page 70 of this pamphlet on the "Wisconsin Income Tax Law." Farm buildings may be lumped at four per cent depreciation per annum.

(5) The burden of proof should be upon any taxpayer who desires to have exceptions made to these general rules for any reason.

(6) The above rules apply to sales of personal property where returns have not been made on the inventory basis.

Cases will occasionally arise calling for a modification of some one of the foregoing rules, and in such cases, assessors of incomes should use their best judgment in applying them, or if in doubt as to the right course to pursue, should consult the tax commission.

DEFERRED PAYMENTS

To assessors of incomes

The following rules are furnished as a guide in determining taxable profit on deferred payment real estate sales. Deferred payment sales of real estate ordinarily fall into two classes:

(1) Sales on the installment plan, in which the initial payment is relatively small (generally less than one-fourth of the purchase price), and the deferred payments usually numerous and of small amounts.

(2) Deferred payment sales not on the installment plan in which there is a substantial initial payment (ordinarily not less than one-fourth of the purchase price) deferred payments being secured by a mortgage or contract, few in number, and payable in a relatively short time.

Sales on Installment Plan

The vendor should report as income from installment payments in any year that proportion of each payment actually received in that year which the gross profit to be realized when the property is paid for bears to the gross contract price. Problem: Assume, for example, that a farm costing $10,000 in 1911, was sold in 1919 for $25,000. Assume that the farm has been improved by the building of a barn costing $3,000, two cement silos costing $500 each, the house has been improved to the extent of $1,000, and 20 acres of wild land have been cleared under contract at an expense of $1,000. The cost of the farm and improvements is $16,000. Assume that $1,000 depreciation has been deducted on income tax returns on the farm buildings. This depreciation must either be deducted from cost or added to the selling price. Subtracting $1,000 from $16,000, the cost, leaves $15,000. Subtracting $15,000 from $25,000, the selling price, leaves $10,000, the gross profit. The gross profit is 40 per cent of the selling price. The terms of sale are $2,500 down and nine annual installments of $2,500, deed to be given upon payment of the last installment. Forty per cent of $2,500, or $1,000, is the profit to be returned as income each year until the full $10,000 profit has been reported.

In most cases of sales on the installment plan and on land contract, it is agreed that the vendor shall give a deed and take a mortgage when 50 per cent of the payments have been made. We will assume that after paying three installments of $2,500 each, which with the initial payment makes $10,000, the purchaser in due time pays his fourth installment of $2,500, receives his deed and gives a mortgage for $12,500. If this transaction takes place in 1923, the vendor should report 40 per cent of $15,000, or $6,000 profit in his return for that year. The transaction should

be considered closed, and the mortgage considered equivalent to cash.

If, after having made two payments, the buyer defaults and the vendor repossesses the property, we have the following situation: The vendor has received $5,000, and has reported as income $2,000. He must take up, as income for the year when the property is repossessed, the remaining $3,000, less any expense incident to repossession.

Deferred Payment Sales Not on Installment Plan

In class 2, the obligations assumed by the buyer are much better secured because of the margin afforded by the substantial first payments, and experience shows that the greater number of such sales are carried out according to the terms. These obligations for deferred payments are therefore to be regarded as equivalent to cash, and the profit indicated by the entire consideration is taxable income for the year in which the initial payment was made and the obligations assumed. If the buyer defaults and the seller regains title to the land by agreement or process of law, retaining payments previously made, he may deduct from his gross income as a loss in the year of repossession any excess of the amount previously reported as income over the amount actually received.

It is of course understood that the fair value on January 1, 1911, must be substituted for cost in all cases where property was acquired before that date.

We have been asked "where a small payment is made in 1919, and a larger payment due in 1920, and the seller alleges that the sale is uncertain of consummation until the 1920 payment is received, must the profit be included and all of it in the report of 1919 income?" The size of the initial payment will indicate somewhat whether the sale was actually made in 1919. If the payment made in 1919 is nominal, simply enough to bind the bargain and allow time for the examination of titles, etc., and is considered to be part of the first payment made in 1920, the same can be considered as made in 1920, and the profit reported accordingly under one or the other of the plans outlined as the facts may require. If the first payment is substantial in character, and the sale is on the installment basis, consider the sale as made in 1919, and the proper portion of the payment reported as income. The vendor has nothing to lose by reporting the sale as of 1919, for if the purchaser defaults, the vendor will have to treat all that he has received as income and the sooner that he begins to report his profits, the better.

The foregoing rules are practically the rules followed by the Federal Government under the revenue act of 1918. There will be exceptional cases to which these rules will not altogether apply. Such cases should be taken up especially with the assessor of incomes.

INTEREST

To assessors of incomes

Chapter 65 of the Laws of 1921 limiting the deduction of interest that may be allowed to individuals, copartnerships and fiduciaries, reads as follows:

"(71.04) (5) * * * Interest paid within the year on existing indebtedness; provided, the debtor reports the amount so paid, the form of the indebtedness, together with the name and address of the creditors. But no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property, or for the conduct of a business, unless the income from such property or business would be taxable under this chapter."

For the purposes of this act the term "indebtedness" may be construed under the following classification: (1) An indebtedness created for the purpose of acquiring, maintaining and improving property for profit. (2) An indebtedness created for the purpose of conducting a business for profit. (3) An indebtedness created for purposes other than for acquiring property or conduct of a business, as, for example, the giving of an accommodation note.

The interest on indebtedness created under classifications (1) and (2) is deductible when the property acquired, improved or maintained, or the business conducted, produce income or might produce income subject to taxation in this state. If located without the state, the income therefrom would not be taxable, and the interest paid on the investment would not be deductible, and conversely, if located within the state the income therefrom would be taxable, and the interest paid on the indebtedness would be deductible.

The question has been raised whether the term "income" as used in the phrase "unless the income from such property or business would be taxable under this chapter" means income derived from the sale of property as well as that derived from its use. The statute defining income includes profits on the sale of property, and the annual or periodical income which the same may produce. Both classes of income are alike taxable. The commission, therefore, rules that interest paid on an indebtedness created for the purpose of acquiring, improving or maintaining property is deductible when the profits, if any, either from its sale or use, might be taxed. This construction permits the deduction of interest paid on an indebtedness created for the purpose of acquiring a home or other unproductive real estate located in this state, or for the purchase of liberty bonds or other property, the profit on the sale of which would be taxable.

Interest on an indebtedness under class (3) would rarely, if ever, be deductible. As a rule the interest paid on this class of indebtedness would not materially affect the net result, and would be negligible in amount. Inasmuch as the amendment was enacted for the purpose of excluding from deductions payment of interest on investments outside the state, analagous to the law excluding losses, it is suggested that income tax assessors take into consideration its evident purpose, and construe and apply it accordingly, giving the debtor the benefit of the deduction when claimed, unless it falls clearly within the excluded classes, or the classes intended to be reached by the law. In other words, the law should be liberally construed in favor of the debtor, and all reasonable doubts resolved in his favor.

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